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Ontario Human Rights Commission Commission ontarienne des droits de la personne





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ANNUAL REPORT 1996-1997



Ontario Human Rights Commission

Chief Commissioner

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June, 1997

Honourable Marilyn Mushinski Minister of Citizenship, Culture and Recreation 6th Floor, 77 Bloor Street West Toronto, Ontario M7A 2R9

### Dear Minister:

Pursuant to Section 31(1) of the Ontario Human Rights Code, it is my pleasure to provide to you the Annual Report of the Ontario Human Rights Commission for the fiscal year 1996-1997 for submission to the Legislative Assembly of Ontario.

This report reflects the activities of the Commission to March 31, 1997.

Yours Sincerely,

Keith C. Norton, Q.C., B.A., LL.B.

Chief Commissioner



# Ontario Human Rights Commission

# Annual Report 1996–97

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### PREFACE



It is an honour for me, in this, the thirty-fifth year of the Ontario *Human Rights Code* to report to the Honourable Minister of Citizenship, Culture and Recreation, the Legislative Assembly, and the people of Ontario on the work of the Commission during the 1996–97 fiscal year. In this report, we attempt to highlight some of the landmarks in the advancement of human rights over the history of the Commission. As you will see, the achievements have been substantial in many areas. However, many challenges lie ahead.

We are acutely aware of the fact that, over the years, the Commission has been plagued by many problems—some related to the very process mandated by our legislation. There has been much criticism—some well informed and some not. I assure you that the Commissioners and the staff are committed to a process of change designed to improve our service to the people of this province.

During this year, enormous effort has been devoted to addressing those service issues which can be addressed without legislative amendment. The Commission has effected major changes—changes which I expect will show concrete results during the next year of the Commission's work.

For the first time in the Commission's history, we have introduced an accountability framework—a series of commitments to the people of Ontario with respect to our service standards which are designed to reduce delay and improve accessibility.

I do want to express my deep appreciation of the commitment and the effort of the staff who have accomplished so much in the way of restructuring and retraining while continuing the ongoing work—indeed exceeding the ambitious performance targets set for the year.

The legislators of this province demonstrated great foresight and leadership when, in 1962, they established this first human rights code in Canada. However, much has changed in the 35 years since.

We in Ontario now speak over 100 languages and proudly represent over 90 cultural and ethnic traditions. To a greater extent than any other place on earth, today, in Ontario we can say, "We are the world come together!"

This presents us with an opportunity of a magnitude that no other place can claim—an opportunity to build a society in which we celebrate the richness of our diversity and in which our differences are not the basis for tension or conflict but rather, the very foundation of mutual respect—a model for the world.

In this complex society, there is an important continuing role for the Human Rights Commission—public education, representing the public interest in assisting people to resolve problems where they arise, and trying to ensure that all Ontarians can live in dignity, free from discrimination.

If your Commission is to fulfil its role, we must be prepared to change and adapt in a changing society. I am encouraged that the government has made a public commitment to review the *Human* Rights Code and the Commission and we look forward to working with the legislators and the people of Ontario and making a positive contribution to the design of a more efficient and effective agency to better serve you.

Keith C. Norton, Q.C., B.A., LL.B.

# INTRODUCTION CELEBRATING 35 YEARS

1997 is the 35th anniversary of the *Human Rights Code*. This Annual Report highlights not only the year's achievements but also the achievements of the Commission in its lifetime. This anniversary also provides the chance to put these developments in their historical and social context.

This is perhaps a good time to take inventory. In the past year, the Commission has undergone significant procedural and structural changes which are the culmination of four years of restructuring. This year, it also came under scrutiny from several government bodies and committees, two of which had reported at the time of the preparation of this report. These reviews have been in relation to the government's commitment to reform the *Human Rights Code*.

At a time when fundamental questions are being asked about the Commission, its work and its mandate, this is an opportunity for informed reflection about the Commission's role and about the best directions for a statutory human rights agency in the future. The Commission is pleased to present a new accountability framework to the people of Ontario. The framework is the first of its kind in the history of the Commission. It is a series of public commitments to customers, to stakeholders and to the Government arising out the Commission's extensive restructuring.

It is our hope that this report will therefore serve not only as an annual rendering of accounts, but also as a source of information about the Commission and its history, and as a road map to the future.

## PART I LOOKING BACK

The *Code* has evolved from a law that extended some protection to minority groups from intentional discrimination to one which also protects against systemic and substantive inequality. Over the last 35 years, the Commission has played a leadership role in this evolution, advocating a broad and purposive interpretation of the *Code*. The Commission has also been at the forefront in pressing for greater social understanding of the changing patterns of discrimination in order to advance human rights in Ontario.

### Historical Notes

The *Human Rights Code* is the legislative foundation for many of the concepts, rights and responsibilities that we associate with human rights in Ontario today. But today's laws are relatively recent. While the *Code's* modern antecedents go back to 1944, with the first Ontario laws banning racial discrimination, the history of human rights in this province begins much earlier, in the eighteenth century.

In 1793, John Graves Simcoe, the Lieutenant-Governor of Upper Canada, passed an anti-slavery decree, called *An Act to Prevent the Further Introduction of Slaves and to Limit the Term of Contracts for Servitude Within the Province*. Simcoe was a committed abolitionist and an outspoken opponent of slavery. The decree was the first of its kind in the British Empire. It established Upper Canada as a sanctuary for American Blacks seeking to escape oppression and find freedom. As a result, in the years following the decree, thousands of slaves escaped from the United States to settle in what is now Ontario. Lord Simcoe's law was progressive and far sighted. It preceded the *Emancipation Act* by forty years and Abraham Lincoln's Emancipation Proclamation by seventy years.

The *Religious Freedom Act* dates back to an Act passed by Upper Canada's Legislature in 1851. That statute dealt with church rectories and other religious matters but it also provided for the legal recognition of equality among all religious denominations. The guarantee of free exercise of religion and worship, without

discrimination or preference, was a precursor of many of the human rights protections that we take for granted today.

In the twentieth century, modern human rights legislation began to emerge. It became clear to the world's nations that the protection and promotion of human rights had to become part of the fabric of international law. World War II provided appalling evidence that governments who trampled on the human rights of their own citizens or who used majority rule to oppress religious or ethnic minorities would soon be trampling on basic standards of civil society everywhere. A concerted multinational effort ultimately led to the United Nation's Universal Declaration of Human Rights in 1948. Canada had a proud role in the drafting of the Declaration through Professor John P. Humphrey who was one of the members of the drafting committee.

But even before that Declaration, Ontario had enacted its first laws banning racial discrimination. In 1944, the *Ontario Racial Discrimination Act* prohibited the publication or broadcast of anything which expressed an intention to discriminate on the basis of creed or race. The legislation was quasi-criminal in nature and enforcement was achieved through private prosecution in the court system. The government of the day was intent on eliminating signs of discrimination that had become relatively familiar sights in Ontario in shop windows, on beaches, public resorts and facilities and elsewhere. In 1948, Mr. Justice MacKay of the Ontario High Court cited the Act when he struck down a discriminatory property covenant purporting to prohibit the sale of land "to Jews or persons of objectionable nationality."

In 1948 Universal Declaration became an international standard and it recognised "the inherent dignity... of all members of the human family..." If these words sound familiar, it is because they were incorporated into the *Code* fourteen years later.

Indeed, until the advent of the Charter in 1982, provincial anti-discrimination statutes had an especially important place in Canada. Discrimination had no constitutional redress in the *British North America Act* except as incidental to the constitutional division of powers between the provincial and federal governments. The constitutionality of laws, from a human rights standpoint, was not open to legal debate. In the absence of legal rights and freedoms with constitutional status, provincial laws like the *Code* were frequently the only available form of redress for many equality cases. As a result, provincial anti-discrimination laws were almost the only protection that the average citizen had.

In the decade following the Racial Discrimination Act, the province enacted fair employment practices and fair accommodation practices laws. These laws used a new type of non-criminal model which was later incorporated into the Code. The new model was essentially remedial in nature, with a focus on conciliation. Investigation and conciliation were provided at that time by officers in the Ministry of Labour. Complaints that were not resolved in this way were referred to a Commission appointed by the Ministry of Labour.

An Anti-Discrimination Commission was established in 1958, with a mandate focusing on public education. Education was viewed as a necessary corollary to the remedial enforcement system that was part of the then-current fair practices legislation. The Human Rights Commission was not established in its current form until 1961.

In 1962, the fair practices statutes were then consolidated into the Ontario Human Rights Code, administered by the Commission that had been established the preceding year. The Code evolved as part of a process which saw the steady growth of the principle that human rights could be secured by legislative measures. Enforcement and administration were brought about by compliance mechanisms in conjunction with educational efforts to create greater public understanding and acceptance of fair treatment and harmonious community relations.

These objectives were summarized by Dr. Daniel Hill, first Director and then Chairman, of the Ontario Human Rights Commission:

Modern day human rights legislation is predicated on the theory that the actions of prejudiced people and their attitudes can be changed and influenced by the process of reeducation, discussion, and the presentation of dispassionate socioscientific materials that are used to challenge popular myths and stereotypes about people... Human Rights legislation on this continent is the skilful blending of educational and legal techniques in the pursuit of social justice.

The first Code prohibited discrimination in signs and notices, public accommodation, services and facilities, employment and trade union membership. It dealt with the grounds of race, creed, colour, nationality, ancestry and place of origin. Each case was handled on an individual basis with an approach that assumed that discrimination was direct and intentional. But this approach was to change in a radical way.

In 1971 the U.S. Supreme Court changed the course of human rights. In the landmark decision of *Griggs v. Duke Power*, 91 s.c.t. 849 (1971) the Court held the *impact* of adverse treatment or conduct—and not just the intention—could constitute discrimination. This development had important implications for systemic discrimination and what is now known in the *Code* as "constructive" discrimination.

Throughout the 1970s and into the 1980s, our society changed to meet the demands of citizens who had a wide range of values and backgrounds. New issues emerged and old issues changed form. Human rights legislation had to evolve and develop more sophisticated tools to meet the needs of a changing society.

In the fiscal year 1975–76, the Commission conducted the first comprehensive review of the *Code*. Seventeen public meetings and more than 300 briefs from organizations, agencies and individuals assisted the Commission to understand the emerging human rights issues that drove the need for new legislation.

What emerged from the review process was a document entitled *Life Together*. It contained almost one hundred recommendations for reform, including how the *Code* and the Commission could be strengthened to adequately address a range of concerns. Many of its recommendations were implemented as public policy statements while others were incorporated into a broadened new *Code* that was proclaimed as law in June of 1982, twenty years after the enactment of the first *Code* in 1962. The new grounds and broadened mandate of protection placed Ontario once again in the forefront of human rights legislation. The 1982 changes were more than mere revisions: they represented a completely new legislative scheme that differed from the 1962 *Code* in style, organization and content. The new *Code* spoke positively of the rights of every person, and not simply of prohibitions.

The Code was amended again in 1986 to bring its provisions in line with the Canadian Charter of Rights and Freedoms. With the constitutional entrenchment of basic human rights in the Charter in 1982 and the coming into force of the equality section three years later, Canada entered a new era in human rights. Many landmark decisions in human rights have been inspired and informed by the Charter, and notably the equality rights section of

the Charter, section 15. These decisions have had profound implications for equality rights in human rights law and for the ability of human rights commissions to use the Charter as a tool to advance their own mandates.

In 1984, the Royal Commission on Equality in Employment chaired by Madame Justice Rosalie Abella took a close look at the notion of equality and its implications for Canadian justice. Madame Justice Abella redefined the then—prevailing concept of equality as "sameness" and replaced it with the notion of equality that seeks to recognize individual ability and accommodate difference rather than deny or punish it.

Since 1986, the Commission has been empowered to deal with discrimination on fifteen different grounds, including race, creed, colour, place of origin, ethnic origin, ancestry, citizenship, family status, marital status, sex, sexual orientation, handicap and perceived handicap, receipt of public assistance (in accommodation only) and record of offences (in employment only). Harassment and reprisal are also prohibited. The Commission has also been given the authority to initiate complaints itself, either through its own initiative or at the request of any person.

In the last fifteen years since the Charter, several important developments have had a significant impact on the development of human rights: rapid demographic changes, the adoption by both provincial and federal government of employment equity laws and programs of multiculturalism, the subsequent repeal of employment equity in Ontario, an increase in litigiousness and a shift to alternative dispute resolution mechanisms. The last decade has also heralded a rise in community-based advocacy and equity-seeking groups.

The search for equal treatment has led to something of a "back-lash" against human rights in the last few years. Books and articles decrying diversity or tolerance have fuelled not only an increase in the respectability of hate groups but they have generated a mini-industry of "rights critics" who characterize progressive laws as threats and who see multiculturalism as a concession to "special interests."

It is easy in this country to forget how dangerous societies can become when diversity is abandoned in favour of one culture, one set of beliefs or one ethnic majority. This year again, ongoing tragedies in the former Yugoslavia, Zaire and Rwanda continue to pit citizens against each other and to serve as warnings against complacency. It is worth remembering from some of the events this year that the Taliban in Afghanistan, the extremists on all sides in the conflict in the former Yugoslavia and the *integristes* in Algeria share a common feature: their view that the "right way to live" can be enforced, or that minorities, women or other groups can be justifiably shunned, oppressed or told how to live based on a culture or values that purport to be superior, whether God-given or otherwise.

In Canada, human rights commissions frequently encounter arguments that extending rights to gays and lesbians, to Aboriginal peoples or to other groups, constitutes "special rights" or "privileges" for "special interest groups." Human rights commissions at both the provincial and federal levels have succeeded in several important cases this year to refute—again—the view that human rights are only for some humans and not for others. These and other developments are set out in the sections below.

### Vorking Concepts in Tuman Rights Law

Human rights law looks beyond the notion of "identical treatment" to the result or impact. For example, *equality* and *accommodation* would require that a ramp be built to allow a building to be wheelchair accessible. This solution is very different than the one that might obtain if one used "identical treatment" as the model principle.

Discrimination is thus no longer limited to differential or intentional acts. The courts and the legislatures across Canada have extended its meaning to include the concept of differential treatment or *adverse impact*. Equality recognizes the fact that if we do not look at results, we are limiting our ability to understand communities, workplaces and schools.

A proper understanding of equality also depends on factors such as historical unequal treatment or disadvantage that may have created unfair power relationships which persist today. Inequality does not simply go away because we decide today that from now on we are going to treat everyone identically. Unequal power relationships, whether between men and women, or between the white majority group and racial minorities, or between Aboriginal

and non-Aboriginal communities, have a tendency to perpetuate themselves despite attempts to change them. These imbalances may need deliberate measures to achieve change, such as the special programs that are provided for in the Code.

Central to the equality debate is the notion that special programs give a helping hand to many individuals and groups that have suffered historical or persistent disadvantage. Special measures and their U.S. counterpart, "affirmative action," are under increasingly shrill attack from various quarters which characterize these measures as "reverse discrimination" which must be opposed. However, it should be borne in mind that special programs are part of the law in Ontario. The intent of special programs is to ensure that temporary measures are available to assist historically disadvantaged groups and to combat discrimination. Special programs remain a fair and useful option for organizations trying to redress problems of under-representation or seeking to eliminate discrimination. Indeed, following the repeal of the Employment Equity Act 1995, the Code is the only mechanism left in Ontario that can address systemic barriers.

The next section will examine some of the key developments in human rights law in Ontario with a focus on the Commission's work in advancing a progressive and inclusive understanding of the Code and the rights contained in it.

### Pushing the Envelope: 35 Years of Legal Developments

Profound social changes over the last 35 years have shifted the meaning that we give to words such as "equality" and "discrimination." Rapidly shifting demographics, new population profiles and a new concept of rights have changed not only the prohibited grounds of discrimination in the Code—from six in 1962 to fifteen today—but also our basic understanding of discrimination and equality.

In the 1960's, for example, human rights did not extend to the rights of women to be free from derogatory comments about their physical appearance in the workplace. Nor did religious minorities have the right to choose a day of rest other than Sunday. The first Code prohibited discrimination in signs and notices, public accommodation, services and facilities, employment and trade

union membership on the grounds of race, creed, colour, nationality, ancestry and place of origin. The *Code* did not provide clear guidelines as to what "equal treatment" or discrimination meant. This allowed the Commission to argue for a progressive and liberal interpretation of the *Code*.

### Some "Firsts"

The Commission's first case before a Board of Inquiry, *Davis v. Frankowski* was in 1962 involved a Black couple who had been refused accommodation at a Rice Lake tourist resort. The Board found for the complainants and ordered the resort owner to either apologize or face prosecution. The respondent apologized and agreed to abide by the *Code* in the future.

The Commission's first accommodation (housing) case before the Board of Inquiry in 1963 was decided by the late Cecil A. Wright, Q.C. In *Khoun v. Rosedale Manor*, an Indonesian student was denied accommodation in an apartment because of his race and the respondents agreed to a comprehensive settlement. This case established a framework for future settlements and a trend toward conciliation that was helpful in future cases in which the Commission obtained the support of companies or government to amend their own policies to comply with the *Code* or to refuse to deal with companies that had policies contrary to the *Code*.

The Commission's first Board of Inquiry decision dealing with "equal pay for equal work" was *Filiatraut et al. v. Children's Psychiatric Research Institute et al.* in 1967. The Board of Inquiry found that the complainants, employed as nurses' aides, performed exactly the same work as the male attendants. The Board made a series of recommendations such as a revised salary scale in order to equalize compensation for similar work. This case set the stage for future cases and legislative changes dealing with equal pay for equal work.

In 1968 emerged the first case in which the Commission was successful in providing meaningful compensation for complainants who had been denied employment. Six Black welders argued that they had not been hired because of their race and the Commission was able to reach a substantial settlement which included monetary compensation of \$28,600, representing the amount the complainants would have earned had they been hired. A year

later, a similar principle was applied to the area of accommodation when Board Chair Professor Horace Krever, in Massey v. Castlefield Apartment et al., found that a respondent landlord had discriminated against a complainant in accommodation because of race and colour. He recommended that the respondent pay the complainant reasonable expenses incurred in obtaining suitable alternative accommodation.

The landmark 1970 case of Simms v. Ford Motor Co. established an important precedent in the area of racial harassment. The Board of Inquiry decided that racially derogatory language in the workplace violated the Code. It also held that the poisoned environment that had been created by racism had become, in effect, a condition of employment for which the employer was liable.

One of the earliest cases dealing with discrimination on the basis of creed in the workplace was the 1971 decision in Gore v. Ottawa Separate School Board. The Commission established the principle that a School Board's requirement that the complainant be Catholic was not a reasonable qualification for the job and was therefore not necessary for the complainant to fulfil her job duties.

The Commission's attempts to eliminate stereotypes regarding women in non-traditional jobs were greatly facilitated by the 1974 case of Shack v. London Driv-ur-Self Ltd. In that case, a woman applied to drive a truck but was refused on the grounds that such work was dangerous for women. The Board found that the complainant had the sole responsibility of accepting job-related risks and that stereotypes about her ability to do the job constituted discriminatory treatment.

The Commission was also successful in arguing the 1975 case of Segrave v. Zellers, where the Board held for the first time that a prohibited Code ground need only be one of the factors in the respondent's mind for a Board to make a finding of discrimination. Since this ruling, Boards of Inquiry have consistently applied this principle in human rights cases.

In a similar vein, the 1976 decision of Jones et al. v. Huber involved a landlord who refused to rent to a Black woman because he feared he would lose tenants. The Board made the significant finding that the motivation for discrimination is not relevant to a finding of discrimination, nor is the defence that the discriminatory treatment occurred to accommodate another person's preference.

Following this trend, the Commission was able to obtain a finding for a complainant in the 1977 case of *Jahn v. Johnstone*, which was the first case in which the Board of Inquiry considered the meaning and application of the *Code* provision that prohibits discrimination in housing because of the complainant's association with a protected group. Similarly, a person's right to complain to the Commission without fear of reprisal was established in the 1978 case of *Blackstock v. Norseman Plastics Ltd.* 

The Commission continued to assert the importance of meaning-ful compensation to complainants and in the 1978 decision of *Gabbidon v. Golas*, the Board of Inquiry awarded general damages for the first time, finding that "an act of racial discrimination is a denial of the very humanity of the person resulting in feelings of humiliation and embarrassment."

### Developments in the Law: Discrimination and Harassment

Even prior to the 1981 amendments to the *Code* which added harassment on the basis of sex or race, the Commission had argued that the *Code* already implicitly contained this protection. The Commission's mandate to eliminate harassment from the workplace is evidenced through its achievements in establishing important principles at Boards of Inquiry.

One of the earliest Board decisions dealing with the issue of sexual harassment was *Bell v. Flaming Steer Steak House Tavern Inc.* in 1980. Although the Board dismissed these complaints, it held that it is discriminatory to allow women's employment terms or conditions to differ from their male co-workers.

Similarly, important legal principles in the area of racial harassment were established in the 1982 decision of *Dhillon v. F.W.*Woolworth Company. The Board held that the atmosphere of the workplace is a term or condition of employment, akin to an employee's rate of pay. This was a change from the earlier trend of Board decisions that blamed complainants whose behaviour may have been inappropriate in the workplace. The Commission was successful in its argument that the complainant's anger toward his supervisor was motivated, at least in part, by the racially charged working environment. The Board further held that where the atmosphere of the workplace is poisoned by racial

slurs, there exists a duty on the employer to take reasonable steps to eradicate this form of discrimination. In this landmark case, the Board also ordered innovative remedies, such as the establishment of a workplace race relations committee to assist in redressing the racial discrimination and harassment in the workplace.

Again, even before the significant 1981 amendments to the Code, the Commission's concepts of "equality" and "dignity" continued to evolve to include more sophisticated interpretations. Notably, the Commission extended its vision of equality to include the concept of adverse impact discrimination and the elimination of barriers to equality for disadvantaged groups. As a result, human rights jurisprudence in Ontario began to incorporate concepts of systemic or unintentional discrimination.

In a 1980 case, Hendry v. L.C.B.O., the Board found that there was systemic discrimination against women due to management's views on appropriate occupations for women. It ordered an affirmative action or special program for women. Such cases helped to promote the concept of substantive equality beyond the notion of "sameness" of treatment, and challenged earlier Board findings requiring "intent" to prove discrimination. This new and broader interpretation enhanced the Commission's ability to investigate complaints of adverse impact discrimination by using statistics.

The Commission's long standing efforts to hold employers responsible for acts of harassment within the workplace were greatly assisted by the 1983 decision in Olarte et al. v. Commodore Business Machines Ltd. et al. which set out the "organic theory of corporate responsibility." In essence the Board found the employer to be personally liable for the acts of employees who were part of the company's "directing mind." This decision was upheld on appeal and the Commission established an important precedent to use in future years to establish corporate liability for acts of harassment in circumstances where the acts are carried out by employees whose authority sets the tone for the organization as a whole. The respondent's appeal to Divisional Court was dismissed with costs.

In 1987, the Commission concluded its first case on harassment on the basis of disability. Boehm v. National System of Baking Ltd. et al., involved a supervisor who had made insulting comments to the complainant and disciplined him because of his disability. The Board held the company liable based on the "organic theory of corporate responsibility" for the supervisor's acts of harassment, finding that the supervisor was part of management and thus his acts were attributable to the company itself.

The 1987 case of *Karumanchiri et al. v. L.C.B.O. et al.* advanced the Commission's long standing position that relevant remedies must accompany findings of discrimination. In this case, the Board ordered that the complainant be appointed to a position that was already occupied. The Divisional Court upheld the Board's ruling, expressing its view that the *Code* should be interpreted broadly and liberally in order to remedy or prevent the effects of discrimination. The purpose of compensation is to restore a complainant, as much as possible, to the position she would have been in had the discriminatory acts not occurred. This was clearly confirmed in a 1989 Court of Appeal decision of *Piazza v. Airport Taxi Association*.

The Commission's commitment to advancing equality rights for women in the workplace, was supported in the landmark 1990 case of *Shaw v. Levac Supply et al.* The Commission was successful in its novel argument that harassment on the basis of sex included a course of derogatory remarks about a woman's physical appearance. The ruling significantly expanded the interpretation of the *Code* to include gender stereotyping.

The Commission's efforts in the 1990 case of *Youmans v. Lily Cups Inc. et al.* led to a settlement which involved substantial systemic reforms to address the problem of sex discrimination and sexual harassment in the workplace and the first Board order of a special program to remedy unjust hiring and promotional practices regarding women in the workplace.

The commitment to meaningful integration in society for persons with disabilities was tested in the 1988 case of *McLeod v. Youth Bowling Council of Ontario*. This case dealt with the complainant's request to use a wooden ramp in order to participate and compete with her peers at bowling tournaments. The ramp did not give her a competitive advantage and the Commission strongly argued against the respondent's proposition that children with disabilities should be segregated into alternate leagues. The respondents for their part, argued that the league rules were reasonable and *bona fide*.

The Board agreed with the Commission that the concept of competition should not become a barrier to persons with disabili-

ties. The Board of Inquiry ordered that the complainant be permitted to participate in the tournaments and required that the respondents allow bowlers to use assistive devices. The Divisional Court upheld the Board decision and reiterated the respondent's duty to accommodate the complainant short of undue hardship.

In the 1992 case of Ghosh v. Domglas Inc., the Commission won a case involving persons who were caught in a vicious cycle of not being able to work full-time because of handicap. They were then disadvantaged in their employment precisely because of their inability to work full-time or because of their attendance record. The Board found that there had been differential treatment on the basis of handicap.

In 1994, the Court of Appeal decided in Roberts v. Ontario Ministry of Health, that the province's Assistive Devices Programme discriminated arbitrarily on the basis of age. The complainant was unable to receive assistance from the government to buy a device to help him read because he was considered to be too old. The government argued that the age limit was part of a special program and thus authorized under the Code. The Court agreed with the Commission's arguments that a "special program" designed to assist disadvantaged groups does not merit Code protection where it actually denies equality of opportunity based on arbitrary factors relating to a ground protected by the Code.

The issue of the right of wheelchair access to buildings providing services was also advanced in the 1995 Board decision of Quesnel v. London Educational Health Centre et al.

In the last fiscal year, the Commission has advanced equality rights in the workplace for disabled persons by arguing for a broad interpretation of "handicap" and "perceived handicap." Most recently, the landmark decisions in Entrop v. Imperial Oil have significantly expanded the definition of "handicap" and "perceived handicap." Entrop and other cases decided this year are discussed in detail in Part IV.

### Adverse Impact and Accommodation

The Commission's progressive legal arguments have led Ontario Boards of Inquiry to recognize, even before the Supreme Court of Canada's landmark rulings in O'Malley and Etobicoke, the existence of adverse impact discrimination and the respondent's duty

to accommodate short of undue hardship. These include the 1977 case of Singh v. Security and Investigation Services Ltd., which involved an exclusionary hiring policy against Sikhs and a mandatory dress code which violated Mr. Singh's religious beliefs; and the 1979 case of Colfer v. Ottawa Board of Commissioners of Police which dealt with the discriminatory use of height requirements to exclude women from jobs. Also notable was the 1977 decision in Morgan v. Toronto General Hospital in which the Board found systemic discrimination in the hiring and promotion of Blacks to supervisory positions.

In a series of Supreme Court of Canada decisions throughout the 1980s, the Commission's mandate was enhanced by judicial reinforcements of the *Code*'s primacy and "quasi-constitutional" status in law.

In 1982, the Supreme Court of Canada decided *Ontario Human Rights Commission et al. v. Borough of Etobicoke*, upholding the 1978 Board of Inquiry decision that a collective agreement imposing mandatory retirement at age 60 is discriminatory on the basis of age. They ruled that such discrimination is only permissible under the *Code* if age is a "bona fide occupational qualification" for the job. In order for such a requirement to be valid, it must be imposed honestly, in good faith and in the sincerely held belief that it is imposed in the interests of the adequate performance of the job. The onus to show that the requirement is warranted rests on the employer. The Court also made the important ruling that the *Code* expresses public policy in Ontario: parties cannot exempt themselves from the application of human rights law.

The decision in *Etobicoke* was applied in the 1984 case of *Cameron v. Nel-Gor Nursing Home et al.*, which dealt with a complainant who was denied a nurse's aide position because of a disability. The Board of Inquiry found that an absence of malice is not a defence to discrimination under the *Code*. The Board also held that it was not sufficient for an employer to form a subjective impression to justify whether an individual can fulfil the essential duties of the job. Even in the absence of an "improper motive," the employer must establish objective evidence to support its decision. The Board's decision was affirmed by the Divisional Court and application for leave to appeal to the Court of Appeal was denied.

Based on these cases, it is apparent that the concepts of adverse effect discrimination and the duty to accommodate were already

well established through the Commission's arguments before Ontario Boards of Inquiry even before the 1985 landmark decision in Ontario Human Rights Commission and O'Malley v. Simpsons-Sears Ltd. In that case, the Supreme Court of Canada addressed several critical issues with respect to accommodation in employment.

Simpsons-Sears had a store policy requiring sales clerks to work on Saturdays. The complainant alleged that this was not possible for her because her religion forbade work on the Sabbath. In this case the Supreme Court reversed the lower decisions, holding that the Code must be given a broad and purposive interpretation and that no element of intent was required to prove discrimination. The Court held that an employment rule, honestly made for sound economic and business reasons, and equally applicable to all, may nevertheless be discriminatory. In such cases, an employer has a duty to accommodate the complainant up to the point of undue hardship.

The employer's duty to accommodate was examined in a number of precedent setting cases following O'Malley. In the 1988 case of Belliveau v. Steel Company of Canada the Board held that the Code places an obligation upon employers to make the necessary inquiries to assist them in providing accommodation in the workplace. Shortly afterwards, the 1990 Board decision in Gohm v. Domtar Inc. held the union and the company jointly liable for failing to make efforts to accommodate the complainant's religious beliefs and ordered a substantial damage award. The respondent's appeal to Divisional Court was dismissed.

### The Code and the Charter

The Code currently includes protection on fifteen different grounds. The Charter moved Canadians to a new era where equality rights were constitutionally protected. Human rights jurisprudence in Ontario has benefited greatly by this heightened awareness of equality issues and by Charter jurisprudence.

Race, creed, colour, place of origin, ethnic origin, age, ancestry, citizenship, family status, marital status, sex, sexual orientation, handicap, receipt of public assistance and record of offences.

The ability of the Board of Inquiry to apply the Charter was clearly set out in the 1990 Board of Inquiry decision in *Cryderman v. York Condominium Corp.* The Board held that a specialized human rights tribunal had the jurisdiction to apply the Charter and to make a finding that a *Code* provision is inconsistent with the Charter. In this case, the Board applied the Charter to expand housing rights in Ontario to young people under 18, by ordering that condominium corporations remove their "adult-only" rules which had the effect of discriminating against young families with children on the basis of family status and age. This decision was affirmed on appeal.

In the 1992 decision in *Leshner*, the Board of Inquiry used section 15 of the Charter to interpret the *Code* in a manner that is consistent with Charter guarantees. In that case, the government of Ontario had discriminated on the basis of sexual orientation when it failed to extend spousal survivor pension benefits to the samesex partners of its homosexual employees. In reaching its decision, the Board found that the definitions of "marital status" and "spouse" in the *Code*—which are restricted to relationships between persons of the opposite sex—contravened section 15 of the *Charter*.

The recent decision of the Supreme Court of Canada in *Bell and Cooper*, held that a body such as the Canadian Human Rights Commission, as well as tribunals appointed pursuant to a referral by the Commission, have no jurisdiction to find that a provision in their enabling legislation is unconstitutional. Thus the Commission cannot subject the *Code* to *Charter* scrutiny. The *Cooper* decision may thus also affect the Commission's ability to question the constitutional validity of other legislation. This is a departure from the previously-established principles that allowed decision-making bodies, other than the courts, to review the constitutionality of their own statutes—albeit in limited circumstances. Nonetheless, the Commission is continuing to pursue equality arguments in cases where the Charter can be used to support human rights.

### **Aboriginal Issues**

Aboriginal communities have been subjected to persistent and derogatory stereotyping and other forms of discrimination in our society. The 1993 decision in *Angeconeh v. 517252 Ontario Ltd.* 

et al. dealt with an Aboriginal complainant who received inferior service and accommodation at an inn. The case helped to demonstrate that ingrained discriminatory practices reinforce an "invidious" form of racist stereotyping of Aboriginal peoples. The 1993 Board decision in Baptiste v. Napanee and District Rod and Gun Club served to protect Aboriginal fishing rights when it accepted the Commission's submissions that a fishing licence rule had an adverse impact on Aboriginal peoples and thus constituted discriminatory treatment.

Last year, Anishinabie v. Near New Store et al. was decided. The case involved derogatory name-calling of the complainant based on racist and sexist stereotypes of Aboriginal women in the social area of services. The Commission successfully proved that the complainant was subject to reprisal and discrimination on the basis of sex and ancestry. The Commission obtained a substantial general damage award in favour of the complainant.

### Sexual Orientation

The Commission has also advanced and supported, with noteworthy success, a number of cases that raise issues concerning sexual orientation.

The 1995 Board of Inquiry decision in Oliver v. The Corporation of the City of Hamilton helped to establish that unfair treatment in relation to services on the basis of sexual orientation is unacceptable. The Board found that a Mayor's proclamation did constitute a "service" under the Code. The Mayor had refused to issue a proclamation in celebration of Gay and Lesbian Pride Week in a manner that was differential as compared with other groups who had requested similar services. This amounted to discrimination. The Board also held the Mayor personally liable.

The Commission was also successful in the 1993 case of Waterman v. National Life Assurance Co. of Canada in which the Board held that an employer discriminated against the complainant by withdrawing an offer of a permanent job, because the complainant had a lesbian relationship with another employee in the same department.

The Commission's efforts to obtain employment benefits for same sex partners have led to two pivotal cases, the 1992 Board decision of Leshner v. Ontario and the 1996 Board decision in

Dwyer and Simms v. Municipality of Metropolitan Toronto and Simms v. Attorney General of Ontario. In Leshner the Board of Inquiry held that the government of Ontario, in its capacity as employer, discriminated on the basis of sexual orientation when it failed to extend spousal survivor pension benefits to the same-sex partners of its homosexual employees. In reaching this decision, the Board found that the definitions of "marital status" and "spouse" in the Code—which are restricted to relationships between persons of the opposite sex—contravened section 15 of the Charter. A similar argument was used in Dwyer and Simms, where the Board found that the respondents had discriminated against the complainants because of their sexual orientation based on the opposite sex definitions of "spouse" and "marital status."

### Marital Status

On the issue of "marital status," the Commission was successful in expanding the protection of this *Code* provision in the 1992 Ontario Court of Appeal decision of *Geiger & Barboutsis v. London Monenco Consultants Limited*. This case involved complainants who were refused company benefits to fly home every three weeks because they were single. The Court of Appeal ruled that the travel policy implemented by the respondents infringed the complainants' right to equal treatment on the basis of marital status. Discrimination on this basis is only permissible where marital status is a *bona fide* occupational qualification.

### Systemic Discrimination and Race

Systemically discriminatory practices continue to involve a complex interaction of superficially neutral policies. They affect equality of opportunity for a myriad of people in our society. Over the last decade, the Commission has argued that subtle patterns of discrimination, particularly race discrimination in employment, can be established where employers have a negative assessment of employees based on racial or ethnic characteristics.

The Board of Inquiry findings in Quereshi v. Toronto Board of Education et al. (1989), Bhadauria v. Toronto Board of Education (1990), Wong v. Ottawa Board of Education (1994), Abdolalipour and Murad v. Allied Chemical (1996), and the ongoing Board

hearing of Wong v. Toronto Hydro et al. have helped to raise awareness of this pattern of discrimination.

The historical balance of power which once tended to lean toward the exclusion of certain disadvantaged groups has begun to tilt toward greater substantive equality. The impact that the Commission has made, particularly with respect to the advancement of human rights in workplace discrimination and harassment, has been profound.

The contribution that the Commission has made to human rights jurisprudence has not been achieved in isolation, and there will undoubtedly be new unique challenges that will force us to develop new perspectives on the meaning of social equality and justice as society continues to evolve. Yet the ideals of the dignity and worth of every person will remain at the core of this new perspective and at the core of the Commission's aspirations.

# PART II 1996–97

### Restructuring and Reform

In 1993, the Commission began a comprehensive process of renewal, focusing on eight integrated *Organizational Improvement Initiatives* that were introduced in May 1993:

- a Quality and Quantity Assurance program;
- a reformed Customer Service program;
- streamlined Enforcement Procedures;
- the use of *Enhanced Technology* to make complaint procedures work more efficiently;
- a leaner, more rational and cost-effective *Organizational Structure*;
- higher standards of Accountability;
- Training and Development programs for staff; and
- the introduction of *Organizational Health* and *Anti-Racist Principles* into the Commission's own administrative and operating structures.

The initiatives have resulted in improvements in the numbers of cases closed and in the quality of work in almost each fiscal year since the restructuring began. The first phase of restructuring in 1993–94 reduced the seven administrative units of the Commission to four branches<sup>2</sup> with a corresponding reduction in senior managers. In 1994, staff consultations were held to obtain input regarding restructuring at the staff level. In 1995 and 1996, implementation of restructuring began and is now in its final phases.

<sup>&</sup>lt;sup>2</sup> The four branches are the (1) Regional Services and Systemic Investigation Branch, (2) the Public Policy and Public Education Branch, (3) the Corporate Services Branch and (4) the Legal Services Branch.

### Highlights of 1996–97

The Commission is pleased to report steady improvements in case management and staff training, and the introduction of new mediation services and a revitalized public education program as part of its internal restructuring process.

In 1996-97, several developments built on progress in recent years. These are some of the key developments:

- In May 1996, the Commission announced the introduction of voluntary mediation services in the Spring of 1997;
- In January 1997, new centralized intake and inquiry services were announced. Four district offices were closed: Kenora, Kitchener, Sault Ste. Marie and St. Catharines:
- the Commission has undertaken a comprehensive review of its entire policy framework updating a dozen public policies and developing new policy work in the areas of creed, pregnancy and language;
- a revitalized public education and communications plan has been approved by the Commission for implementation starting in 1997-98;
- · for the first time in several years the Commission has allocated funding and dedicated resources to public education activities.

These developments have taken place against the backdrop of fiscal restraint. Despite successive years of budget pressures, the Commission again balanced its books this year. It should also be noted that although several ministries and agencies experienced significant cuts this year in Ontario, the Commission's budget was reduced by only 7% in 1996-97.

### Looking at Reform

The Commission was the subject of review by several governmen sources this year. First, the Red Tape Review Commission identified the need for "refinement of enforcement procedures and processes" at the Ontario Human Rights Commission, citing time and costs associated with investigation and resolution of complaints and the number of complaints in the system that respondents' groups identified as being unrelated to the Code. The Red

Tape Commission recommended a number of solutions, notably an amendment that would require a person to establish reasonable grounds in support of the belief that a right under the *Code* has been infringed.

Second, the Agencies Boards and Commissions (ABC) Task Force deferred its recommendations regarding the Commission until the government completes its review of the Commission. However, the Task Force did identify three principles for reform and administrative justice, including the standardization of agency hearing procedures, coordinating or sharing service delivery, and requiring agencies to manage their own performance in a publicly accountable way.

A government committee of Caucus also examined the *Code* and the Commission in the context of the government's commitment to reform the *Human Rights Code*.

### Case Management

Ontario is Canada's most populous and diverse province. With a third of the country's population in its jurisdiction, the Ontario Human Rights Commission's case load—almost 2,800—is the highest in the country, and twice as high as the federal human rights commission.

Key features of case management this year are:

- 2,058 complaints<sup>3</sup> were closed in 1996–97;
- for the first time in recent memory, the Commission closed more complaints than it opened in a fiscal year with total openings of 1,916;
- 215 cases are more than three years old as at March 31, 1997.
   This was 7.7% of the total Commission case load as compared to 15% in 1993;
- the average time it took to deal with complaints (early settlements plus formal complaints) stayed steady at about 15 months; and

<sup>3</sup> This includes early settlements and formal complaints.

• the average age of complaints in progress (as of March 31, 1997) was 18.4 months.

Both the size and the age of the case load continue to be a challenge. The Commission has little control over the size of its case load. The number of complaints in the system depends in part on the number of complaints filed at any given time. Indeed, the Code does not allow the Commission to screen the complaints coming into the system. A better indicator of efficiency is the time it takes to process a complaint. While progress has been made, the average age of complaints in progress is still too high. As discussed later in the Accountability Framework, the Commission is targeting a reduction from eighteen to sixteen months over the next year.

The number of complaints awaiting assignment to an investigator is partly responsible for the age of complaints. The Commission's policy of handling cases in strict chronological order has been based on a "first come first served" principle, according to the date of filing the complaint. Parties to human rights complaints sometimes express frustration about the fact that they are ready to settle a case but the Commission is unable to "get to" the file in a timely way. Because of chronological sequencing, parties have had to wait their turn unless they met the Priority Handling Criteria which are reserved for extraordinary circumstances such as life-threatening illness or imminent loss of key evidence.

To address these issues, a special case management project was set up this year to look at five hundred cases that were awaiting assignment to a human rights officer. The project will develop a simpler, faster system to handle complaints. The project ended on March 31, 1997 and it will result in the introduction of a new case management approach across the province that will not only look at when the Commission receives complaints, but also at other factors

### Public Education

This is the international decade for human rights education, and the Commission is proud to report that it has substantially improved and revitalized its public education program through new activities and a renewed commitment to this part of its mandate.

Requests to the Public Policy and Public Education Branch for assistance and expertise are on the rise. In 1996–97, the Branch received more than 1,200 requests from employers, service and community organizations for advice, information and guidance on the *Code* and on public policy issues. This is double the number from last year, and is over and above the number of inquiries and referrals handled by the Commission's regional offices. These inquiries are from both the public and private sectors on a range of compliance issues such as in-house policies, employment application forms and medical testing or drug and alcohol testing policies. These services are provided free of charge.

In addition, conferences, seminars and workshops form an important and growing part of the Commission's public education work. As part of the Commission's renewed commitment to public education, the Commission has quadrupled the number of public education activities and conferences in the last 18 months. Presentations are made by the Chief Commissioner or Commissioners, by members of senior management and by regional managers. In March 1997, the Commission approved a Public Policy and Public Education Strategy for 1997–2000, the first element of which will double the number of Commission staff who conduct public education.

During the 1996–97 fiscal year, presentations were made at several colleges and universities, including Laurentian University (Sudbury), McMaster University (Hamilton), University of Toronto, Queen's University (Kingston) and St. Lawrence College (Kingston).

The Commission has also participated in numerous conferences including those sponsored by Youth and Community Partnerships, the Centre for Labour-Management Development, International Society of Certified Employee Benefit Specialists and the Learned Societies. The Commission has also worked directly with employers and employees in both the public and private sectors, for example: Tescor Energy Service (Toronto), Cuddy Food Products (London), the Centenary Health Centre (Scarborough), and the Oshawa Public Utilities Commission. Presentations were made to professional groups with a Human Rights component as part of their mandate: Human Resources Professionals London & District, Personnel Association of Windsor & District, Ontario Secondary School Teachers' Federation and Toronto Employment Equity Practitioners' Association.

The Commission was also proud to work in partnership with community groups and agencies such as: Metropolitan Toronto Police (Hate Crimes Unit), Canadian Red Cross, the League for Human Rights of B'nai Brith and the Antiracist and Multicultural Educators' Network of Ontario. Some of its educational activities have been directed toward particular groups through presentations to the Matawa First Nations Management Group (Thunder Bay) and Parkdale Project Read (Toronto).

The Commission was pleased to assist in the production of the March 21, 1997 edition of "Off the Hook," a TV Ontario live show for youth that dealt with racism. The resulting video will be provided free of charge by the Commission to schools and educators who are looking for an exciting way to introduce concepts such as diversity and tolerance to teenagers.

The Commission's new Web Site (www.ohrc.on.ca) was also launched this year for interested individuals and organizations to access information about the Code, the Commission and human rights issues. Visitors to the OHRC Site will find the full, up-todate text of the Ontario Human Rights Code; Teaching Human Rights in Ontario (an educational package for high schools and adult education centres); locations and telephone numbers of Commission offices; summaries of recent Board of Inquiry decisions and key Court decisions; copies of Commission publications (including policy statements, guidelines and plain language brochures) and a direct E-mail link to each of the four branches of the Commission. On-line service is available in both French and English.

The educational package, Teaching Human Rights in Ontario, which was launched in 1995, continued to be distributed on request throughout the year. The package is also available in large print, on disk, tape and on the Web Site. A revised version was released early this year. More than 260 copies of the package were distributed in its various formats this year. As well as high school law and cooperative education teachers, many teachers of "English as a second language" have been requesting copies of the package for use with their students.

# Policy Development

The Commission has the responsibility to advocate and promote human rights in both policy and practice. This gives the Commission opportunities to provide leadership in social policy development and to act as an agent of positive change.

Through the efforts of the Commission before Boards of Inquiry and through policy development, the *Code* has been afforded a broad, liberal and purposive interpretation in order to provide wider protection in cases where the law was unclear. In the past, these efforts provided a legal basis and an impetus for policy changes in Ontario and ultimately for legislative change in some cases.

For this reason, public policy statements and guidelines are the most important documents used by the Commission other than the *Code* itself. They provide information about the Commission's interpretation of specific provisions of the *Code*, and the public has the right to expect that the Commission will adhere to the principles espoused in its policy statements.

# Review of Public Policy Framework

Following the introduction of some legislative changes in the early Nineties and the emergence of several key Board of Inquiry decisions, it became apparent that the existing policies were in need of revision. There were also gaps in the Commission's policy work, notably in the areas of pregnancy and creed.

The Public Policy and Public Education Branch undertook a comprehensive review of its entire policy framework in 1996 in order to ensure that staff and the general public have up-to-date information about the *Code* and the Commission's policy decisions. In addition, the Commission approved four new policies in the last year: *Female Genital Mutilation* (FGM), *Discrimination and Language*, *Creed and the Observance of Religious Beliefs and Practices* and *Pregnancy*. Revised and updated policies and plain language brochures have now been approved by the Commission and are being released to the public. The new policies relating to creed, pregnancy and language are reproduced in appendices to this report.

Plain language documents have been developed for anyone seeking general knowledge about basic concepts in the *Code*, or seeking guidance about how to apply human rights law in the workplace or elsewhere. Policy documents, on the other hand, reflect not only updates required by changes to the *Code* but also

revisions that reflect recent developments in significant decisions of Boards of Inquiry. They have been written for an audience who already has a basic knowledge level of the Code and is seeking additional information, details or supporting references. Human resources managers, lawyers, equity professionals and other practitioners would benefit most from Policy documents.

Both the new and revised policies and guidelines contain some innovative features to assist practitioners, staff and lay persons interpret and understand the Commission's approach to the Code:

- legislation or international conventions that are relevant to the subject matter are reproduced in each document i.e., the Code, Employment Standards Act, international human rights instruments, etc., for ease of reference;
- key Board of Inquiry decisions and court decisions are cited and references are integrated into the text of the policy statements; and
- Commission policies are now available on the Commission web site for easy access, in addition to the alternative formats that continue to be available.

Commission policies and plain language brochures are available in English and in French, and alternative formats are available from the Corporate Services Branch at the Ontario Human Rights Commission.

# Section 34 Guidelines

In addition, the Commission has also prepared detailed guidelines for section 34 of the Code. Section 34 gives the Commission the power not to deal with certain complaints.

From a policy standpoint, there are compelling reasons in favour of appropriate, rigorous use of Section 34. These reasons relate to administrative fairness, for example, through the prevention of manifestly malicious or abusive complaints. Moreover, delays in the processing and investigation of complaints are an ongoing source of concern to the Commission, despite recent progress in case management figures. This fiscal year, 17% of complaints were not dealt with under the provisions Section 34.

It should be kept in mind that the Commission is obliged to receive *any* complaint, provided that the complainant believes that his or her rights have been infringed. Section 34 is the only mechanism in the *Code* that allows the Commission not to deal with complaints that are in bad faith or that are outside the Commission's authority or jurisdiction, or that are too late. Section 34 allows the Commission to control its caseload and provides it with direct involvement in its own processes.

On the other hand, advocacy groups and community organizations have expressed concerns about the use of Section 34. It is the Commission's view that a fair and principled use of Section 34 will address and balance the issues of both natural justice and of the Commission's statutory authority to use Section 34 in appropriate cases. For these reasons, the Commission has developed and approved a detailed set of guidelines dealing with Section 34.

# PART III CURRENT ISSUES IN HUMAN RIGHTS

Downsizing, Demographics and Systemic Discrimination

> In the mid-1980s something terrible happened to thousands of hard-working Canadians on their way up the corporate ladder: they got stuck... [and] knowing it was worse in the mid-eighties did not help an unsuccessful job-seeker in the mid-nineties.4

The general erosion of job security during these difficult economic times has made the debate about workplace equality an acute and painfully real issue for many. In Ontario, however, there has been no way to establish what the systemic impact of downsizing has been. The Employment Equity Act required analyses of designated groups' representation in the workforce. In its absence, no comparable requirement has replaced it and no workforce profile information is being collected for employers under provincial jurisdiction.

The Code provides that if a neutral rule or factor results in an adverse impact on persons, based on a prohibited ground such as race, sex, etc., then that rule or factor is discriminatory and violates the Code. Significant downsizing efforts have raised concerns about the impact of these measures on racial minorities, persons with disabilities and other groups. Certainly in the federal public service, as a recent report has shown, the current profile of public servants after downsizing shows under-representation of certain groups and a significant under-representation of designated groups at managerial levels.

In Ontario, employment-related cases now make up almost three quarters of the Commission's entire caseload and the government,

<sup>&</sup>lt;sup>4</sup> David K. Foot and Daniel Stoffman, Boom, Bust and Echo (Macfarlane Walter & Ross, Toronto: 1996) at 57, 68. Reproduced with permission.

as the largest provincial employer, is also frequently named as a respondent in human rights complaints. The public service, perhaps more that any other employer, has an obligation to ensure that it reflects the community it serves, especially since downsizing and restructuring may amplify discriminatory patterns of hiring, promotion and seniority.

Also, as part of the Commission's mandate to investigate cases of systemic discrimination, the Commission initiated a complaint against the City of Toronto in May 1996. The complaint dealt with the City's firefighters selection process. In 1993, the Commission had approached the City of Toronto to resolve potential systemic employment barriers in the hiring of firefighters. Three years later, a recruitment process was undertaken by the City. Twenty-four white males were hired, resulting in the exclusion of racial minorities, women and Aboriginal peoples from the final selected group of trainee firefighters.

When the results were announced, the Commission exercised its authority under section 32(2) of the Ontario *Human Rights Code* to initiate a complaint against the City of Toronto and pursue the investigation and processing of its own complaint. The complaint is currently in progress.

# acial Minorities

People of colour in Ontario still have to fight against job discrimination and differential treatment. Reports on systemic discrimination against Black males in the criminal justice system last year and other studies on earning and education levels continue to be a source of legitimate anxiety and concern for society at large. Black communities in Ontario continue to express concerns about community relations with police forces. A study released in early 1997 by York University's Institute for Social Research showed that racial minority families and low-income families had a more difficult time finding a job as compared with European families from an affluent background, even where education and generic skills were similar.

The Commission continues to investigate and litigate complaints based on complex and often wide-reaching allegations of race discrimination. Recently litigated and ongoing cases have involved evidence of both subtle and direct patterns and practices of

discrimination engaged in by employers and co-workers. Often the evidence of race experts has been relied upon by Boards of Inquiry in such cases. As race discrimination is rarely overt, and is more typically practised in a subtle or even inadvertent manner, these cases have been some of the most complex and challenging. Details are provided in Legal Developments 96-97.

# Aboriginal Issues

We urge governments at all levels to open the door to Aboriginal participation in the life and governance of Canada.5

The history of Aboriginal peoples is a stain on Canada's international human rights record. In 1993 the Canadian Human Rights Commission identified the issue of Aboriginal peoples as Canada's most significant—and unresolved—human rights issue.6

In 1996, the Royal Commission on Aboriginal Peoples released its final report. The litany of documented discriminatory treatment includes environmental dislocation and degradation, family separation, cultural assimilation policies, infringement of traditional and treaty rights, desecration of burial grounds and substandard housing.

These problems are not solely federal. Systemic bias and racism are prevalent in several areas of provincial jurisdiction: persistent discrimination against Aboriginal women in urban housing,7 inadequate education and service delivery systems off-reserve, and conflicts over the management of resources such as inland fisheries have exacerbated traditional grievances of Aboriginal bands, especially in areas where relocations or claims disputes have taken place.8 In the area of accommodation such as hotels, there are documented cases of systematic denial of services to Aboriginal peoples.9

<sup>5</sup> Report of the Royal Commission on Aboriginal Peoples, (Minister of Supply and Services, 1996), Vol. 1 at xxiii.

<sup>&</sup>lt;sup>6</sup> Annual Report, 1993.

<sup>&</sup>lt;sup>7</sup> Report of the Royal Commission on Aboriginal Peoples (Minister of Supply and Services, 1996), vol. 4 at 576, and vol. 3, chapter 4.

<sup>&</sup>lt;sup>8</sup> E.g. see Report of the Royal Commission on Aboriginal Peoples (Minister of Supply and Services, 1996) vol. 1 at 467. Conflicts over resource management continue to the present day.

See Angeconeb v. 517252 Ontario Ltd. et al. (Board of Inquiry, 1993).

Patterns of racism and discrimination are evident both on and off reserves. Aboriginal persons in urban areas also suffer from the cumulative and aggravated effects of poverty, lower education levels and discrimination. Given that almost 20% of Canada's Aboriginal population resides in Ontario, and that a significant percentage live off-reserve, these are real and present issues.

The Report of the Royal Commission on Aboriginal Peoples contains several recommendations calling for a role for provincial and municipal governments as well as the federal authorities in resolving many of the issues facing Aboriginal peoples. Both federal and provincial governments should sit down with Aboriginal leaders and work toward negotiated solutions. Without some concrete and concerted multi-government efforts to address the recommendations in the Report, Canada's history of mistreatment and negligence of its Aboriginal peoples is destined to remain part of our future as well as our past.

#### Sexual Orientation

In 1986 the Ontario legislature expanded the Ontario *Human Rights Code* (the "Code") by adding, among other grounds, protection from discrimination based on sexual orientation. Nevertheless, prejudice against gays and lesbians because of sexual orientation continues to be socially acceptable in ways that prejudice against people based on other protected grounds is no longer tolerated. Discrimination against gays and lesbians is both endemic and systemic in our society. Operating overtly through our laws, policies and regulations, it manifests itself in every aspect of life.

The need to promote equality for gays and lesbians in Ontario led to the Commission's decision to examine the legislative and social environment in Ontario. With respect to the legislative environment, the Commission undertook a comprehensive review of Ontario statutes, including the *Human Rights Code*. Approximately sixty-five contain opposite sex definitions of "spouse" or related terms. In fact, many of these do not contain their own definitions, but simply refer to the definitions set out in Ontario's *Human Rights Code*, a definition that has already been found to violate section 15 of the *Canadian Charter of Rights and Freedoms*. The Commission's study revealed that virtually all of these statutes treat gays and lesbians differently and a significant

number infringe the equality provisions of the Code and the Charter. The Commission had the benefit of input from several groups who provided their views on priorities within gay and lesbian communities. The Commission is reviewing strategies for action in light of the study results.

In March, 1997 the Canadian Association of Statutory Human Rights Agencies (CASHRA) announced that it would intervene before the Supreme Court of Canada in Vriend v. Alberta. In that case, the Alberta Court of Appeal decided that gays and lesbians could be denied equal rights and benefits because the Alberta legislation is silent on the issue of sexual orientation. The Court of Appeal also decided that the Charter cannot apply to remedy this situation. The Chief Commissioner of the Ontario Human Rights Commission, currently the President of CASHRA, said:

This case is potentially very important. The ultimate decision by the Supreme Court could have ramifications far beyond the facts of this case alone and could determine the impact of the Canadian Charter of Rights and Freedoms on Human Rights legislation in every jurisdiction in Canada.

#### Sex and Harassment

Women continue to be subject to sex stereotyping, sexual harassment and a denial of equality of opportunity, particularly in the area of employment. Balancing family and career is an important part of the employment picture for many women: this issue has required positive measures such as clear public policy statements on sexual harassment and gender stereotyping as well as on pregnancy and pregnancy-related complications. The Commission has responded to these challenges this year by introducing a new policy on pregnancy and the Human Rights Code, with a special focus on women in the workplace. The policy is available from the Commission and will be placed on the Commission web site shortly.

Statistics Canada reported in 1993 that two million women had experienced work-related sexual harassment. In Ontario alone, sexual harassment cases filed with the Commission have doubled since 1991. The Commission this year updated its detailed policy statements and plain language brochures dealing with sexual harassment and gender-based discrimination. These documents

are available from the Commission and are on the Commission web site.

# Tenants' Rights

For several years, landlords' associations have been lobbying the government to introduce criteria that would allow the screening of tenants using income information. This issue is currently before a Board of Inquiry in one of the Commission's most significant systemic cases.

This year the government tabled *Bill 96. An Act to Consolidate* and Revise the Law with respect to Residential Tenancies ("Bill 96"). The Bill provides for the creation of regulations respecting the type of "income information" that can be used to screen prospective tenants. This raises serious human rights concerns for seniors, single women and persons who are receiving public assistance. One third of Ontario renters pay more than 30% of their income as rent (Hulchanski, 1994). Overwhelmingly, these people pay their rent in full and on time. If Bill 96 allows future regulations to the *Human Rights Code* to permit landlords to use income information such as type or source of income, or the "maximum 30% rent-to-income ratio" rule to screen tenants, significant numbers of these individuals and their families will find themselves without affordable housing.

The Commission does recognize that landlords have legitimate business reasons for requesting information such as credit checks and rental histories which are far better indicators than income information as to a prospective tenant's ability or willingness to pay. First and last month's rent also protects landlords in the event of default.

The Commission has long taken the position that there is no business case for tenant selection based on either source of income or rent-to-income ratios except to establish eligibility for subsidized housing. The data do not support a link between rent-to-income ratios on the one hand and ability to pay or likelihood of default by a tenant on the other. There is no objective evidence that welfare recipients move into apartments that they simply cannot afford. In short, rent-to-income ratios have a demonstrated adverse impact not only on persons on public assistance, but also on senior citizens, persons with disabilities and single mothers. Women's shelters have also pointed out that women who are

denied housing because of income criteria may return to abusive spousal relationships to secure housing for themselves and their children.

The Code's protection against discrimination on the ground of public assistance (e.g., welfare recipients) is limited to the social area of accommodation (such as rental housing). In March 1997, the Chief Commissioner advised the Government, the Leader of the Opposition and the Leader of the Third party of his concerns, namely that regulations allowing screening based on income information will effectively authorize discrimination against people on public assistance. This will wipe out the protection provided by the Code on the ground of public assistance for all practical purposes.

#### Hate Literature on the Net

Schools and communities currently face an alarming proliferation of hate propaganda via the information highway. Hate propaganda and hate-motivated crimes are not only an injury and indignity to their target populations—they are an injury and an indignity to all Canadians. Since the Internet and the Web have become so important in our schools, the Commission has a growing interest in the interaction between education and the Internet.

Traditions of freedom of expression and speech are deeply rooted and of invaluable importance to any democratic, pluralistic society. At the same time, history has shown us that incitement to hatred can completely undermine tolerant, civil society. The Human Rights Code itself contains a clear defence of freedom of speech. Clearly, no human rights legislation or commission can create a society based on justice, peace and respect for human dignity on its own. A concerted, community-based approach is needed. And new strategies are needed to address new issues and social realities.

In March 1997 the Chief Commissioner, in his capacity as President of the Canadian Association of Statutory Human Rights Agencies, sent a letter to the Prime Minister and the Premiers in support of the Canadian Human Rights Commission and its efforts to use human rights laws to shut down hate on the Internet

# PART IV

# **CURRENT LEGAL DEVELOPMENTS 1996-97**

#### Creed

The complainants in Lewis and Steiner v. Leeds and Grenville Board of Education alleged discrimination on the basis of creed, ethnic origin and ancestry. The complainants are teachers with the respondent school Board. These complaints raise the same issue: Christian employees are able to observe their days of religious observance with paid holidays (by virtue of the confluence of these religious days with statutory holidays) while employees whose holy days do not coincide with statutory holidays do not get paid for these days. While the entitlement to days off for religious observance is established in law, the extent of the entitlement to remuneration for such days off is not well established.

A settlement was reached which includes changes in the school Board's policy for days off with pay for religious leave and applies not only to teachers, but to all employees. Additionally, the complainants were reimbursed for days of religious observance taken in the past, and received \$300.00 each in general damages.

In Jazairi v. York University et al. the complainant alleged that he was subject to discrimination based on creed. The Commission investigated the complaint and was of the view that the discriminatory treatment was based on the complainant's political beliefs not his creed. Consequently, the Commission decided not to refer this complaint to the Board. The complainant is judicially reviewing the Commission's decision, arguing that "creed" in the Code includes political belief. The Divisional Court decision is pending. It should be noted that the recent Supreme Court decision in Bell & Cooper v. Canadian Human Rights Commission et al., in which the Court has indicated that the Canadian Human Rights Commission has no jurisdiction to consider the validity of its own legislation, may impact upon the Court's decision in Jazairi.

# Disability

In 1996, The Board of Inquiry released Phase III of Entrop v. Imperial Oil Limited, a case that has far-reaching consequences in the workplace. The complainant had been an employee of Imperial Oil for 18 years. He was subjected to unequal treatment in employment that included mandatory self-disclosure of past alcohol problems, loss of his job and a subsequent reinstatement process requiring ongoing undertakings and controls, all as a result of the company's "Alcohol and Drug Policy." This treatment was because of his "handicap" or "perceived handicap."

To date, the Board has made the following rulings:

- Drug abuse and drug dependence are "handicaps" within the meaning of the Code.
- · The mandatory disclosure of past or present drug abuse problems and the consequences (reassignment to a different position, with reinstatement only after a lengthy and restrictive process) constitutes direct discrimination on the basis of a handicap or perceived handicap.
- · The drug testing programs in the Policy discriminate against persons who are substance abusers on the basis of handicap.
- The respondent *perceived* that persons testing positive for the presence of drugs have a handicap. This was based on specific evidence about the respondent and from the consequences of a positive test. Therefore, the testing programs discriminated against those who tested positive on the basis of perceived handicap.
- Freedom from drug related impairment on the job is a bona fide occupational requirement. However, elements of the respondent's Alcohol and Drug Policy were not linked closely enough to preventing impairment on the job to qualify as a defence.

The following elements of the respondent's Policy were ruled to be unlawful:

- mandatory disclosure of substance abuse problems without regard for the length of time that may have elapsed;
- the minimum seven years abstinence to qualify for reinstatement;
- the other mandatory conditions to qualify for reinstatement;

- pre-employment and random drug testing;
- random alcohol testing.

The following restrictions were also noted:

- drug testing "for cause," "post-incident," or in relation to "certification for safety-sensitive positions," and "post-rein-statement" may be permissible, but only if necessary as part of a broader system of assessing if drug abuse is present;
- alcohol testing related to "certification for safety-sensitive positions," and "post-reinstatement" may be permissible, but only if required as part of a larger process of assessing the presence of alcohol abuse.

The Board permitted the parties to reach an agreement as to how the respondent's Policy might be amended in light of the rulings and has retained jurisdiction on this issue. With respect to the complainant's allegations of reprisal, the Board, in finding for the complainant, stated that the proper standard under s. 8 of the Code is the perception of the "reasonable human rights complainant" and emphasized that Boards of Inquiry must be sensitive to the fact that many complainants experience great fear and anxiety arising from having filed a human rights complaint. The Board reasoned that allowing retaliatory behaviour to go unchecked would frighten complainants into dropping their allegations, agreeing to unacceptable terms of settlement or refusing to provide critical evidence. The failure to vigilantly protect complainants from reprisal would therefore frustrate the purpose of the Code. A series of remedies was ordered by the Board including special damages, general damages in the amount of \$10,000, and changes in Mr. Entrop's personnel file.

The respondent is currently appealing the Board decision. Phase IV of the hearing, which will deal with further allegations of reprisal is scheduled in April and May 1997.

An important settlement was reached between the parties in *Croal v. Pembroke Civic Hospital and Mae Ziebell*, a case which involved discrimination on the basis of age and perceived handicap. The complainant, who turned 65 years old in 1996, began working for the respondent Hospital in 1967. In September 1991, the complainant was told that she would lose her job because of alleged hearing difficulties. The complainant was offered a choice between retiring and accepting another job. She had no training for the other job which required 12-hour and weekend shifts and

was considered to be a "heavier" job. Given these alternatives, the complainant "chose" to retire. In settlement, the corporate respondent agreed to pay to the complainant \$20,000.00 in general damages and \$18,500.00 in legal fees incurred. The corporate respondent also agreed to pay into the complainant's RRSP account a sum of \$47,556.00.

In Lewis v. York Region Board of Education and Ministry of Education, Katie Lewis, a child with intellectual and physical disabilities, was offered a placement in a separate school for the "trainable retarded." Her parents sought to enrol her in kindergarten at the local public school. At the hearing, the Commission argued that integration of the complainant into a regular classroom was a duty of accommodation required by the Code and that the failure to provide this accommodation was discriminatory. Although the evidence at the hearing was that Katie's parents would have accepted a placement in a special class within a regular school, the Board of Inquiry dismissed the complaint on the grounds that Katie's needs could not have been met in the regular classroom without a "stretching" of resources, such as the provision of a communication specialist. The Board of Inquiry also held that the concept of "segregation" was not applicable where a child was denied access to the mainstream of education for reasons of mental disability. A notice of appeal has been filed and the matter is under consideration given the recent release of the Supreme Court of Canada's reasons in Eaton.

Thomson v. Fleetwood Ambulance Service and OPSEU involved a complaint based upon a collective agreement which reduced an employee's vacation entitlement for each full month that an employee was absent from work. The complainant had been absent for a number of months because of an injury for which he received Workers' Compensation benefits. It was decided that the clause in question breached the Code, since it amounted to constructive discrimination because of disability.

OPSEU was not found liable since it established that it had tried for years to remove the clause from the agreement. The employer was ordered to stop applying the clause in question, to pay the complainant the value of the lost days of vacation in his case plus interest, and to pay \$ 1,000.00 as general damages. This case is currently under appeal.

The complaint in Katherine Crabtree v. Econoprint et al. dealt with discrimination on the basis of handicap in the context of an employment interview. The complainant attended a job interview at the premises of the respondents. During the interview the complainant, who has Spinal Muscular Atrophy, asked if she could sit on the corner of a desk because she had difficulty getting out of low chairs. The Personal respondent acquiesced with respect to this seating arrangement and then proceeded to make inquiries regarding the complainant's disability. The complainant's ability to do the job was queried, despite assurances that the complainant was fully capable of performing the essential duties.

The respondent decided not to offer the complainant the job because he believed that Ms. Crabtree could not perform the job. He did not base his negative assessment upon any objective evidence. Instead he relied upon his personal impressions of the complainant's abilities.

The Board found that although employers are prohibited from questioning applicants in an interview about their disabilities, the complainant—by asking to sit on the corner of the desk—had made a discussion regarding her disability "reasonable." The Board went on to find however that the respondents did discriminate against the complainant in the decision not to hire her. Respondents who believe applicants incapable of performing the essential duties of jobs must have objective evidence, and not impressionistic beliefs, to justify their hiring decisions. Even if the complainant was incapable of performing the essential duties of the job, the respondents could have accommodated her without undue hardship. The Board ordered general damages in the amount of \$1,000 and special damages of \$2,560 plus interest along with public interest remedies.

The Commission recently intervened at the Supreme Court of Canada in Gibbs v. North Battleford Co-operative et al., a Saskatchewan case under that province's human rights legislation. The complaint dealt with a long-term income replacement policy provided by the respondent employer to its employees. The income replacement scheme distinguished between employees unable to work because of physical disability and employees unable to work because of mental disability. Specifically, the benefits available to the former were substantially more generous than the benefits available to the latter. On May 1 1996, the Supreme Court dismissed the respondents' appeal. The Court's dismissal of the respondents' appeal means that distinctions in benefits coverage drawn between mental and physical disabilities are prima facie discriminatory.

#### Marital Status

In Gallagher v. The Regional Municipality of Hamilton-Wentworth et al., the complainant developed a relationship with another employee in the spring of 1988. The relationship became public knowledge by the summer of 1988 and they married in the spring of 1990. In September 1988, the respondents transferred the complainant to the Clerks Department, basing their decision on an anti-nepotism policy. The complainant alleged that she was unequally treated because of the work transfer and the creation of a poisoned work environment.

The Board of Inquiry dismissed the complaint because the relationship at the time the first alleged incidents of discrimination and harassment occurred was a 'dating relationship' and did not fall within the definition of 'marital status'. With respect to the events which occurred following the establishment of the complainant's common-law relationship and subsequent marriage, the Board of Inquiry ruled that the definition of marital status in the Code does not extend to protect an individual where the problem arises from the identity of the spouse rather than the status of the relationship.

#### Accommodation and the "Minimum Income" Cases

Kearney et al. v. Bramalea Ltd. et al. (the "Minimum Income" cases) involve issues of discrimination on the basis of age, sex, marital status, citizenship, place of origin, family status, receipt o public assistance.

These cases have received a share of attention from the media and opposition from the landlords' community. They involve constructive or adverse effect discrimination in what will be a landmark decision involving housing rights. The complaints challenge the common practice used by landlords to screen tenants based or their source of income and/or based on a rent-to-income ratio of around 30%. This means that a landlord will refuse to rent if the rent exceeds 30% of the applicant's income. The Commission and the Centre for Equality Rights in Accommodation argue that this policy is discriminatory because of its disproportionate exclusion of a number of groups protected by the Code, including people in receipt of public assistance, young people, refugees and single

mothers. This lengthy and complex hearing has recently concluded and a decision is currently pending.

# lace of Origin

In the case of Abouchar, the complainant is a Francophone of Lebanese origin born in Egypt. He immigrated to Canada in 1969. He alleges that he was discriminated against by the Board of Education for Metropolitan Toronto and other respondents when he was unsuccessful in two managerial job competitions. He alleged discrimination on the grounds of race, place of origin and ethnic origin and he also alleged that the respondents preferred to hire Franco-Ontarians rather than immigrant Francophones. This is an important test case as it is one of the first to challenge an alleged hiring practice that favours one segment of the Francophone community in Ontario. This hearing is continuing.

ace

The July 1996 decision in *Naraine v. Ford Motor Co. Ltd.* is a significant step forward for cases involving race discrimination. The complainant, of South Asian descent and originally from Guyana, worked for the Ford Motor Company in Windsor for over nine years. He alleged that his working environment was poisoned by racist graffiti and verbal comments that were directed at him and, in some instances, directed at other racial minority employees. The complainant also alleged that he was given inferior work assignments and training and that he was subject to a higher level of scrutiny and discipline than other employees. In the latter three years of his employment, Mr. Naraine was subject to progressive discipline, ultimately resulting in his termination for an alleged altercation with a co-worker.

The Commission argued that both Mr. Naraine's behaviour and his treatment by the company were, in part, a product of the poisoned environment. The Board of Inquiry held that name-calling and graffiti should be recognized as inherently destructive to racial equality in the workplace. The Board went on to note that as the complainant chafed under the poisoned work environment, his outbursts became more frequent. The Board noted that in a debilitating environment, the complainant had no way of knowing whether the treatment he received was motivated by racism or otherwise.

The Board of Inquiry concluded that the respondent failed to take seriously or investigate the allegations of unfair treatment. It further determined that there was sufficient evidence of direct supervisory involvement in and knowledge of a poisoned work environment to establish corporate liability. A causal connection between the poisoned environment and the complainant's termination was established. However, the Board found that this was not an appropriate case for personal liability given the systemic nature of the racial discrimination in the workplace.

The issue of damages was decided by the Board in December 1996. Although rarely awarded, the Board awarded reinstatemen in accordance with Mr. Naraine's wishes. It also established guidelines to facilitate Mr. Naraine's reinstatement, including an order that the respondent train Mr. Naraine so that he could become conversant with technological developments since his termination, and pay for reasonable counselling expenses associated with the reintegration process. The respondent was ordered pay special damages, including seniority, pension benefits, employment benefits and vacation entitlement to Mr. Naraine for th amount that Mr. Naraine would have earned in his position from the date of discharge to the date he assumed employment with another company. The respondent was also ordered to pay \$30,000 in general damages: \$20,000 as compensation for the "intrinsic value of the infringement of his rights and as compensation tion for the experience of victimization" and \$10,000 for "menta anguish caused by the respondent's recklessness in contravening the Code." The Board also awarded prejudgment interest.

Argument on the issue of costs was heard in January 1997 and a decision is pending. The respondents have filed a notice of appear of the Board's decisions to date.

Abdolalipour and Murad v. Allied Chemical involved allegations of discrimination on the basis of race, ancestry, and sex as well a a poisoned work environment. Mr. Murad alleged that he was denied a permanent position because of his race and ancestry as did Ms. Abdolalipour, who further alleged that she was denied equal treatment because of her gender. She claimed that she experienced a poisoned work environment: during the time she worked at Allied Chemical she was exposed to pornographic pictures.

The Board held that discrimination is most likely to operate through assumptions and biases that are largely unintentional. It already well established that discrimination in hiring does not have to be intentional for a violation of the *Code* to exist. The Board found that attitudes tainted by racial bias are more likely to influence a workplace where there has been no active or systematic encouragement to examine and challenge such assumptions. Relevant considerations in drawing an inference as to whether racial bias affected decision-making include the representation of racial minority employees relative to the surrounding area.

Since explicitly racist or sexist comments are unacceptable today, the mere absence of such comments does not necessarily mean that racism or sexism has not occurred: silence says little about the presence or absence of attitudes that may be influenced or tainted by racial or gender biases.

The Board found that Mr. Murad's qualifications ranked him on par with one of the successful candidates and ahead of the other. The Board also found that the less qualified candidate (a white male) was actively promoted by his supervisor (also a white male) and that there was no satisfactory explanation as to why Mr. Murad was not promptly advised of permanent vacancies. The Board accepted the Commission's submission that, to a large extent, Mr. Murad became virtually invisible to his superiors when advancement to a permanent lab analyst position was being considered. The Board concluded that there was discrimination against Mr. Murad, at least partly on the basis that because of his race and colour he was not seen as "fitting in." Accordingly, the Board awarded this complainant lost wages and \$8,000 in general damages, plus interest.

With respect to Ms. Abdolalipour, the Board accepted that the prevalence of stereotypes about women and their role in the workplace, including the display of pornography, indicates the presence of gender discrimination. The Board also recognized that not all women are treated the same way in a male-dominated work environment or will react in the same way or share the same experience. On consideration of all of the evidence, the Board found that Ms. Abdolalipour had experienced discrimination in the hiring process, contrary to the *Code*.

The Board also found that Ms. Abdolalipour experienced a poisoned work environment. The Board found that the attitude toward women in the plant was reflected in the recurrence of pornography and that management knew it was there. The Board further accepted that even "soft" pornographic images of women

are likely to increase feelings of physical vulnerability in the workplace.

Accordingly, the Board awarded Ms. Abdolalipour \$8,000 in general damages for discrimination in the assessment of her work performance and a further \$5,000 in general damages for being exposed to a poisoned work environment. The Board also ordered the respondent to pay interest.

In the ongoing case of Wong v. Toronto Hydro et al., the Board of Inquiry is dealing with the critical issues of subtle race discrimination and the existence of a "glass ceiling" to progression for racial minorities, particularly Asian Canadians in professional occupations. The complainant, originally from Hong Kong, worked as an electrical engineer for the respondent for nearly 13 years. In 1989, he filed a complaint alleging discrimination because of race, ancestry and ethnic origin. The complainant alleges that his work had been undervalued and, as a result, he ha been unsuccessful in some 29 job competitions while working at the respondent company. Evidence is still being called in this complex hearing which is still ongoing.

#### Sex

Crook v. Ontario Cancer Treatment & Research Foundation and Ottawa Reg. Cancer Centre (August, 1996) dealt with discrimina tion on the basis of sex and pregnancy and the right to receive sic benefits during a period of pregnancy-related health leave from work. The decision is one of the few cases that interprets section 25(2) of the Code in relation to the Employment Standards Act [ESA].

Dr. Crook was denied sick leave benefits immediately before and following the birth of her child. The respondents argued that this was not discriminatory and that given the statutory scheme of maternity benefits available under the ESA and unemployment insurance, Dr. Crook experienced no disadvantage through the denial of sick leave benefits. It is noteworthy that federal benefits would have capped out far below what Dr. Crook could have recovered through use of her sick credits.

The Board of Inquiry found that the respondents' denial of the us of sick benefits during a period of pregnancy-related health leave from work constituted direct discrimination. The Board determined that section 25(2) of the *Code* was not a defence for the respondents as the plan was not provided under a contract of group insurance. The Board also found that the commencement of a maternity leave under the *ESA* is triggered by the employee's choice so that the employer does not have a unilateral right to place an employee on a maternity leave or on a leave that displaces entitlement to sick leave benefits. The Board awarded Dr. Crook general and special damages plus interest in the amount of \$54,863.33, and ordered the respondents to discontinue this discriminatory practice. The respondents are appealing the Board's decision.

#### Sexual Orientation

In September 1996, the Board of Inquiry released a crucial decision dealing with two complaints on the issue of sexual orientation. In *Dwyer and Simms v. Municipality of Metropolitan To-ronto Attorney General of Ontario*, the two complainants, a gay man and a lesbian, challenged their exclusion from the spousal benefits provisions of their respective employers' pension benefits, insured health benefits and uninsured employment benefits plans. Under these plans, the opposite-sex spouses of employees are eligible for the employer's benefits plans. Same-sex partners of gay and lesbian employees are not eligible. The legal issues raised in this hearing relied on the Supreme Court of Canada's earlier decision in *Egan v. Canada*, as well as a challenge to the constitutionality of certain provisions in the *Code*.

The Board of Inquiry found that the respondents had discriminated against the complainants because of their sexual orientation. The Board found that the *Code* must be read as a whole and consideration must be given to the opposite sex definitions of spouse and marital status found in the *Code*. The Board applied a Charter analysis to the opposite sex definitions of spouse and marital status and concluded that these definitions contravened s. 15 of the Charter and were not reasonable or democratic limits on the equality rights guaranteed by s. 15. The Board "read down" the opposite sex definitions of spouse and marital status so as to eliminate the discriminatory effect of the words "of the opposite sex."

The Board then found that the opposite sex definitions of spouse in the *Municipal Act* and *The Municipality of Metropolitan Toronto Act* infringed the *Code*, which has primacy over other provincial legislation.

The Board awarded general and special damages and also made the following orders:

- The opposite sex definitions of spouse and marital status in the Code, the Municipal Act and The Municipality of Metropolitan Toronto Act should be "read down" or interpreted so as to comply with equality guarantees in the Charter.
- Municipalities were required to extend insured health benefits and uninsured benefits to the same sex spouses of employees.
- The Province was directed to interpret and apply immediately the Municipal Act definition of "spouse" as if it included same sex spouses with respect to insured and non-insured benefits.
- The Province was directed to interpret and apply the Municipal Act, Pension Benefits Act, Ontario Municipal Employees Retirement Act, and the provincial Income Tax Act definitions of "spouse" as if they included same sex spouses with respect to pension benefits. This was contingent on the amendment of the opposite sex definition of spouse in the federal *Income Tax* Act to avoid the possibility of deregistration of the pension plan.
- Metro Toronto was ordered to continue to provide insured health benefits to the same sex spouses of employees, to provide uninsured benefits without discrimination because of sexual orientation and to inform its managers and employees of such.

This case is currently under appeal.

In an ongoing case, Moffat v. Kinark Child and Family Services et al., the issue of stereotyping in the form of an unfounded association between sexual orientation and paedophilia is raised. The complainant, a gay man, was fired shortly after he became a foster parent of a male youth. The complainant has also raised allegations on the basis of a perceived handicap, namely AIDS. To date, the complaint has been successfully amended to include the grounds of family status and reprisal. Furthermore, from an evidentiary perspective, this case has interesting implications, because the Commission was successful in obtaining permission from the Board of Inquiry to introduce electronic evidence from a key witness residing in Germany. Evidence is still being called at the Board of Inquiry hearing.

#### Damages

In Geiger & Barboutsis v. London Monenco Consultants Limited, the complainants worked for the company at a remote site approximately 200 kilometres north of Thunder Bay. Under company policy, married employees were flown home at company expense every three weeks. Unmarried staff did not qualify for this benefit, and had to fly home at their own expense. The Board of Inquiry dismissed the complaint and the Board's decision was upheld by the Divisional Court.

The Ontario Court of Appeal set aside the earlier decision of the Board of Inquiry. The Court of Appeal ruled that the travel policy implemented by the respondents constituted an infringement of the complainants' right to equal treatment under s.4(1) of the Code (now s.5(1)). The assessment of damages was remitted back to the Board of Inquiry and the Board of Inquiry recently released its decision. The Board awarded damages including the complainant's out of pocket expenses, lost travel benefits plus interest as well as general damages. At the hearing, the respondents indicated that they have already amended their travel allowance policies to comply with the provisions of the Code. The respondents are currently appealing the Board's decision on damages.

OHRC and Hom v. Elijah Elieff and Elieff Investments Ltd. dealt with the complaint of Chippheng Hom who alleged discrimination and reprisal with respect to occupancy of accommodation based on race and ethnic origin. The Board of Inquiry did not find that there had been discrimination under the Code but did find that the respondents had reprised against Ms. Hom. The Commission appealed the Board's findings that the complainant was not subject to discrimination or to a poisoned environment, as well as the quantum of damages awarded to compensate the complainant for the reprisal.

The Divisional Court found that the evidence showed a poisoned environment and that the respondents did violate section 2(1) of the *Code*. In allowing the appeal on this point, the Court increased the total award from \$2,500.00 to \$6,000.00 plus post-judgment interest. The Court, in finding liability for the poisoned environment, specifically stated that it agreed with the Commission's legal assertion that corroborating evidence of the complainant's testimony regarding statements made to her by the respondent was *not* required. With respect to the amount of compensation

ordered for a finding of reprisal, the Court stated that while the reprisal was a serious matter, the determination of the amount of an award is a matter in which the judgment of the Board should be accorded considerable respect. While the award of \$2,500.00 was at the low end of the appropriate scale, the amount was not insignificant, nor did it "shock" the Court's conscience.

Regarding payment of pre-judgment interest, Mr. Justice Southey had earlier decided in another case that interest was not available for human rights complaints. However, here he reversed himself holding that the decision of the Divisional Court in the West End Construction case respecting the jurisdiction of the Board of Inquiry to award interest remains authoritative and that, in his opinion, it should be followed by the Court. Having determined that interest is generally available, the Court found that in the circumstances of this case, a failure to award prejudgment interest did not constitute a reversible error.

#### Procedural Issues

Section 37(1) of the *Code* provides that where a complainant wishes to make an application for reconsideration, the Commission may allow an extension beyond the 15-day period to file the application where there are special reasons to support such an extension. In Malhotra v. Ontario Human Rights Commission, the complainant filed a complaint with the Commission, alleging discrimination with respect to employment on the basis of ancestry. The Commission decided not to request the appointment of a Board of Inquiry. The complainant sought an extension of the fifteen-day time limit for filing an application for reconsideration but the application was not granted by the Commission. Malhotra sought judicial review, and in June 1995, the Divisional Court decision dismissed the application, holding that the question of whether "special reasons" exist for granting an extension is a matter within the Commission's expertise. The complainant sought leave to appeal to the Court of Appeal (denied) and the Supreme Court of Canada (denied).

Since this case was decided, there have been two notable Divisional Court decisions, Farooqui v. Ontario Human Rights Commission and Chen v. Ontario Human Rights Commission which have followed the same line of reasoning provided by the court in Malhotra. These recent cases provide support for the Court's

finding in *Malhotra* that the Commission has considerable discretion at this procedural level.

The Commission has the discretion, under section 34(1)(a) of the *Code*, not to deal with complaints that "*could* or *should* be more appropriately dealt with under an Act" other than the *Code*. Recently, there have been a number of judicial reviews on this issue. Currently, the Commission is awaiting hearing dates in *Borome et al.* on the issue of the Commission's decision not to deal with the complaints under section 34(1)(a).

The Divisional Court recently decided the case of *Naimji v. North York Board of Education* in which judicial review was sought respecting two decisions made by the Commission: not to deal with a complaint, and upon reconsideration, to uphold that decision. One of the grounds raised by Mr. Naimji was that the complaint "could" not be more appropriately dealt with under another Act, because the time limits for filing a grievance had expired. The Divisional Court rejected Mr. Naimji's argument that the words "could" and "should" in section 34(1)(a) mean that there must still remain available to the complainant another Act under which to pursue his complaint; the Court held that the interpretation of "could" as "can" is incorrect. Rather, the Court held that "could have" is a better interpretation and is consistent with the general intent of the *Code*.

The issue of the rights of a complainant to proceed with a complaint alone and without the Commission was adjudicated for the first time in the interim decision of Shapiro v. The Regional Municipality of Peel. In this case, the Commission reached a settlement with the respondents to which the complainant was not a party. This settlement addressed the public interest issues in the complaint. The respondent argued that the complainant was thus precluded from proceeding on her own before the Board of Inquiry. The Commission and the complainant argued that the complainant has separate party status at the hearing and as such has the right to call evidence, to examine witnesses and to make argument. The Board Chair dismissed the respondents' motion and accepted the arguments put forward by the Commission and the complainant. The Board held that a complainant has independent party status with full rights of any party in a proceeding. Moreover, the Board Chair recognized the dual importance of the Commission's ability to accept a settlement which achieves its public interest mandate and the complainant's right to pursue his or her individual remedy at a Board of Inquiry hearing.

# **PART V ACCOUNTABILITY FRAMEWORK**

The Ontario Human Rights Commission is committed to informing the public and the Legislature of its planned activities and the results that can be expected. The objective of this framework is to create clear expectations, transparent reporting and measurable results that are consistent with the financial resources committed to the organization. This is our contract with the people of Ontario for the delivery of services in a manner that fulfils our legislative mandate.

In the 1997–98 fiscal year, the following key objectives will determine our priorities:

- First, to improve customer service through program redesign and improved infrastructure;
- Second, to promote the public interest through revitalized. planned programs of education and information about human rights.

# Program Redesign

The legislative framework for the Commission's mandate to resolve human rights complaints is set out in section 33(1) of the Code:

Subject to section 34, the Commission shall investigate a complaint and endeavour to effect a settlement.

The Commission has had a two-pronged approach to complaint resolution: the conciliation of formal complaints by Investigation Officers and the early settlement initiative or "ESI." While both approaches have enjoyed success, there have been diminishing returns over time, and particularly in the past two years. A number of factors were examined through restructuring that underscored the need for a more substantive approach to complaint resolution.

The Commission introduced the ESI in the late 1980's. While ESI's were a considerable success in resolving complaints in the first two years, there has been a notable decline in success rates. A number of factors contributed to the decline. On the one hand, the Commission has had to redirect its resources from intake to investigative services due to the pressures of case load size and age. Moreover, the ESI procedure itself did not represent a substantive attempt at a resolution of human rights issues. It became instead a quick check to determine if the parties to the complaint were willing to settle at the outset. ESI's usually involved a few phone calls and when settlement was not imminent, a formal complaint was filed.

The ESI had another drawback, namely that it does not meet the requirements set out in section 33 of the *Code* (which requires an attempt to settle a complaint) because the ESI takes place prior to filing a formal complaint. As a result, a further attempt to settle after the formal complaint was filed became necessary.

Conciliation, on the other hand, is the settlement process that takes place after investigation. In conciliation, it should also be noted that Human Rights Officers are required to attempt settlement even where there is no evidence of a *Code* violation. Conciliation attempts have often resulted in protracted discussions, creating delays and contributing to the aging of the caseload. This has had resource implications and has raised understandable concerns on the part of respondents. To respond to these issues, and as part of the Commission's final phases of restructuring, the Commission will introduce voluntary mediation services effective May 5, 1997.

#### **1**ediation services

In May 1996, the Commission announced the introduction of new mediation services for the Spring of 1997 as part of the last phases of restructuring. Mediation services will be offered in the early stages of the complaint process to attempt to resolve the matter to the satisfaction of both parties. As a result, the Early Settlement Initiative will be discontinued.

The Commission will introduce mediation services on May 5, 1997 in all of its regional and district offices. In Toronto, the new Mediation Office will be located at 180 Dundas St. West.

Mediation is a substantive attempt to achieve settlement of a complaint. It is a way to resolve disputes by helping both sides to

negotiate a solution and solve the conflict. It is also a way for both sides to better understand each other's position and it avoids lengthy and often expensive investigation and litigation. A Mediation Officer from the Commission will work with parties to give each party a direct role in crafting a settlement that is mutually acceptable.

Mediation is expected to yield higher success rates with enhanced technology, trained and experienced mediators performing the function, and procedural changes to improve the Commission's service delivery. The proposed system design includes mediation services that will be offered after a complaint has been filed allowing the Commission to fulfil its mandate under section 33 of the Code.

The Commission will retain its public interest mandate in the complaints process by ensuring that public interests issues are addressed in mediated settlements.

In designing the mediation system, the Commission invited complainant and respondent groups and representatives with an interest in the Commission's services to attend scheduled meetings in order to seek input and feedback. The Commission will also be examining follow-up and evaluation strategies for the period after the implementation of the mediation.

By introducing mediation in the complaint process, the results expected by the Commission are:

- · Approximately 45% of the cases within the Commission's jurisdiction will be settled at the mediation stage in 1997-98. This will result in a corresponding decrease in cases referred to investigation.
- Cases referred to mediation will be dealt with within 90 days;

Commission staff have undergone certified training by professional mediation experts who have also assisted in the design of the mediation system.

# Centralization of Inquiry and Intake services

The Commission's objective is to provide high quality service to all residents of Ontario at the initial point of contact through one window of service. Effective May 1997, the Commission will be providing inquiry and intake services on a provincial basis through the Toronto Mediation Office. Five-day per week service will be available.

A centralized service in this area will also ensure greater consistency in the services provided through a specialized team that will:

- handle all public inquiries received by the Commission on a same day basis;
- respond to letters within 14 days of receipt;
- · improve access to and consistency in inquiry services;
- provide service on a five day per week basis as opposed to the current three days per week;
- conduct interviews with complainants about the complaints and serve complaints;
- receive the respondent's written response to complaints and set up mediation meetings within two weeks of the response;
- identify Section 34 issues on a preliminary basis.

Commission staff are developing comprehensive standards both with respect to service quality issues and the time frames for the drafting, filing, and service of complaints.

Almost 90% of individuals who contact the Commission do so by telephone. For these individuals, centralization of inquiries and intake will offer improved access to the Commission through one window service. However, accommodation will be provided for persons who need personal services.

For customers who require services in other languages, the Commission has established a linguistic services resource tool for use by Commission staff to ensure that customers are informed of community services across Ontario that can provide interpreter services or access to them. The resource contains up to date references for more than fifty languages. Persons who are deaf and/or hearing impaired continue to have access to the Commission through a TDD line.

Intake and inquiries staff have received intensive and specialized training in Commission procedures and policies, as well as in customer service. These initiatives are part of an overall training program in 1997 that has been the most extensive in the history of the Commission.

# **Expected Results:**

- early assessments of investigative requirements or jurisdictional issues will reduce overall caseload size;
- overall improvement in the age and management of the caseload:
- better service to the people of Ontario.

Prior to restructuring, the responsibility for the management of cases at the Regional Office level was divided between two positions: Regional Managers were responsible for all active files and Regional Case Coordinators were responsible for all incoming files as well as those awaiting assignment to an investigator. There were also some differences in the approach that different regional managers took to case management and the implementation or interpretation of operational policy. Systemic complaints were investigated by specialist officers who were part of a unit based in Toronto and complaints which raised issues with important policy implications required a consultation with policy staff based in Toronto.

In 1996–97, more front line positions were created to deal with the public directly on issues involving complaints and inquiries, and this was possible in part through the elimination of the Regional Case Coordination positions. The Regional Manager is now the point of contact for complainants and respondents who want information about any aspect of complaints before the Commission. Legal and policy expertise will be integrated at the field level in case reviews while a central case coordinating function has been introduced at head office to ensure uniformity and to develop innovative approaches to case management. Additionally, a specialist position has been created at the head office in Toronto to coordinate systemic issues. This position will be responsible for providing advice and training for the investigation of complaints that raise systemic issues in the regional offices.

# **Expected Results:**

• easier access to information about complaints for the public; and

• integration of policy and legal considerations and requirements into complaint processing.

# Information technology

The Commission obtained the support of the Ministry of Citizenship, Culture and Recreation to purchase new technology, including telephones, computers and optical scanners in 1996–97. Technology enhancements, including the development of a new case management system will provide improved productivity and assist in the overall operations of the Commission. Over the next two years, when combined with new case management approaches and the introduction of mediation, significant customer service enhancements are anticipated:

- adherence to established time standards for service in each stage of the complaints process;
- significant productivity improvements particularly at the inquiry and intake stages;
- enhancements at the mediation and investigation stages as a result of easy access to electronic records of precedents, case law and other resource tools;
- elimination of duplication in data;
- enhanced consistency of service;
- improved access to case status information for parties to complaint and internal staff.

A new database, which is simpler to use and maintain, but more efficient in terms of the range and complexity of information which it can provide and manipulate, is being set up. Commission staff will thus have better access to information about complaints such as aggregate data, which are important for mediators, investigators and policy analysts involved with systemic issues or who need to compare recent settlement decisions. Confidentiality will be respected and maintained throughout the system.

# Expected Results:

• the average age of complaints in the system will decrease from over 18 months to 16 months in the 1997–98 fiscal year;

• an increased volume case closings per officer, from 35 cases to

# New Regions

The Commission has made further structural changes in order to position itself to better manage in the future within its allocation and to provide better customer service to the people of Ontario. Regional boundaries have been realigned with a resulting consolidation of the number of Regions from seven to four.

The Regional office of the Southwestern Region is now located in London, with satellite offices in Windsor and Hamilton. The boundaries of the Northern Region remain the same, with offices in Sudbury, Timmins, and Thunder Bay. In recognition of its geographic realities and customer service needs, the staff of the Northern offices will function both as investigators and mediators although the same individual will never conduct both a mediation and an investigation in the same file. The boundaries of the Eastern Region have been broadened to include the city of Peterborough and communities east of Oshawa, with service being provided from two locations, Ottawa and Kingston.

Four field offices have been closed—St. Catharines, Kitchener, Sault Ste. Marie, and Kenora. The offices were closed on January 31, 1997.

In the Greater Toronto Region, the three offices will be consolidated to two, namely the Investigation Office and the Mediation Office under the separate direction of two Managers. Details about the Mediation Office have been provided above. The new offices will open on May 5, 1997.

# The Office of the Registrar

As part of restructuring, the newly created Registrar's office will consolidate responsibilities that had been spread between the Chief Commissioner's Office and three other Branches. It now provides the public with a central point of access to the Commission on cases after they have left the Regional offices following investigation. The Registrar will ensure the efficient processing and disposition of all matters relating to Commission meetings.

The Registrar's Office reports directly to the Executive Director.

The reconsideration function has traditionally been the responsibility of either the Regional Services or Legal Services Branch. There has been some criticism of perceived bias since the same Branches which investigated or provided opinions on complaints were then involved in reconsideration matters. The responsibility for reconsideration has now been vested in the Office of the Registrar, and it is anticipated that this will diminish the perception of bias in the reconsideration process.

The Registrar's Office is responsible for:

- · reconsideration requests;
- · decision letters to parties to complaints;
- · Freedom of Information and Ombudsman requests; and
- all aspects of case processing once the case has left the Region until a referral to the Board of Inquiry.

# nhanced training

As part of its original commitment to staff training, the Commission is providing regular training to staff through formal corporate training initiatives, self-learning resources and funding of individual training needs consistent with performance reviews and objectives.

The anticipated results are:

- a skilled workforce with expertise in the requirements of their positions;
- · improved quality and consistency in service delivery; and
- improved customer service.

# ealigning expenditures to upport business objectives

The services described in this accountability framework will require increased resources notably for public education, information technology and training. Accordingly, with the restructuring of the Commission, a greater percentage of resources will be committed to these items, as well as to field and front-line services.

# Revitalized public education

The constant pressure to manage a growing caseload with fewer resources has diminished the focus on other parts of the Commission's mandate. In 1993 and 1994, for example, the Commission conducted only a handful of public education initiatives.

In the latter part of 1995, a renewed commitment to public education became part of the Commission's restructuring program. In the last eighteen months, the Commission has increased its public eduction program fourfold in direct delivery or face-to-face educational sessions. The Commission has also approved a program to revitalize this aspect of its mandate. On January 28 1997, the Commission approved a new Strategic Plan for Public Education and Communications. Framework for the Future: 1997-2000 is "good news" for the Commission and the public. It represents a commitment to public education as a corporate priority.

The plan supports the Commission's commitment to improved customer service through planned, systematic programs of education and information about human rights. More Commission staff including lawyers and policy analysts and education specialists will be given public education responsibilities. This will more than double the number of staff involved in public education. Second, the Commission will increase resources dedicated to educating Ontarians about their rights and responsibilities under the Ontario Human Rights Code. This reflects a commitment on the part of the Commission to public accountability and transparency.

The Plan is strategic, proactive, integrated, affordable and phased. Specific sectors will be selected with a view to their potential for increased civic involvement and partnership in human rights. Two major sectors will be addressed: education an employment. In addition, there will be a focus on building relationships with organizations serving vulnerable communities or disadvantaged groups, with business and respondent communitie and with ethno-cultural community agencies.

The Commission has also committed itself to active outreach to the community. The plan integrates education into the mandate of each of the Branches of the Commission. The resources allocated to these activities are modest and within the Commission's financial allocations for the upcoming fiscal year. The Plan build on existing resources within the restructured Commission thereby minimizing the creation of new expenses, while ensuring that the Plan is implemented in a staged fashion over a period of three years.

## expected results: Framework Objective

to "enhance the capacity of the Commission to advance public policy and promote public education" by:

- building capacity within the Commission itself;
- building strategic relationships with stakeholders and partners;
- · developing special initiatives to address Aboriginal issues;
- repositioning the Commission as an effective public opinion leader.

## Internal capacity building"

The Plan will strengthen the Commission's ability to deliver programmes of Communication and Education through strategic allocation of funding, through staff training in educational techniques and development of materials to support ongoing activities.

## Building strategic relationships"

Human rights education is a task that is currently shared by many community groups—public and private, voluntary and for-profit—all of whom have a shared responsibility for human rights. The Commission has committed to improving its liaison with these groups in an effort to reach out to the many communities that make up Ontario.

## ie Web Site

The Commission is only a recent member of the Web community. Already, the advantages of this powerful tool for Communications and Public Education are evident. The Plan commiss the Commission

sion to greater use of the World Wide Web to make information about issues of human rights available to the media, practitioner students and the general public. The Commission's Web Site (http://www.ohrc.on.ca) was launched during Human Rights Week in December 1996 and was the culmination of a year's work among all the branches of the Commission. Over the next year, the Commission will be placing this annual report and various publications such as policy statements and guidelines on its web site.

#### Conclusion

The Commission is conscious of the need to seek innovative way to ensure that its service will be more accessible and efficient. The objectives and expected results that have been set out in this annual report are designed to focus the various projects undertaken as part of the Commission's restructuring and to establish clear commitments and timelines:

- 1) to ensure that to the extent possible all OHRC functions can b carried out effectively by front line staff;
- 2) to clarify responsibilities and accountability for all OHRC staff:
- 3) to consolidate and strengthen all enforcement functions of the OHRC:
- 4) to create and promote a synergy among key functions;
- 5) to ensure that resources are used in a strategic manner.

In implementing the initiatives set out in the accountability framework, it is the Commission's intention that these objectives will be realized as part of the Commission's restructuring proces

## COMMISSION STRUCTURE

The Ontario Human Rights Commission (the "Commission") is a Schedule I agency of the Ontario Government. The Commission administers the Ontario *Human Rights Code* and is accountable to the Legislature through the Minister of Citizenship.

## Iffice of the Chief Commissioner

The Office of the Chief Commissioner ensures that the functions of the Commission are carried out in accordance with the provisions of the Ontario Human Rights Code. The Chief Commissioner provides strategic leadership to the Commission and ensures, through the Executive Director, the effective and efficient management of its operations, including case management and policy development.

## ffice of the Executive Director

The Office of the Executive Director has administrative responsibility for the agency and directs all aspects of the operations of the agency. The Registrar's Office, responsible for arranging Commission meetings and Reconsideration is attached to the Executive Director's Office. Commission operations are carried out by four branches:

## egional Services and Systemic Investigation Branch

The Regional Services and Systemic Investigation Branch (RRSIB) is the largest operation of the Commission. All the enforcement functions of the Commission are incorporated into this Branch, including mediation services. Regional services include staff working in 10 district offices in four regions of Ontario.

For the most part, the public's first contact with the Commission is through the Mediation Office of the Greater Toronto Region, which handles intake, makes referrals and drafts complaints. Mediation is conducted in all regional offices.

The RSSIB Branch also targets and investigates systemic practices which operate to unfairly disadvantage one or more groups protected under the Code. It develops precedent-setting cases and comprehensive model settlements through strategic enforcement designed to eliminate systemic barriers and put into place broadbased remedies.

The Branch is also responsible for developing strategies to address the Commission's caseload, as well as maintaining accurate and up to date statistical information. This form is used to monito the Commission's caseload, and forms the basis of the Branch's planning and strategy development. The Branch is responsible fo ensuring Regional Managers are apprised of Case Management strategies.

## Legal Services Branch

The Legal Services Branch assists the Commission in fulfilling al legal aspects of its mandate, including compliance, litigation and support to the public education function. Its activities include providing legal advice to officers and regional managers concerning investigation and conciliation of cases, providing legal counsel to the Commission before boards of inquiry and the courts on matters of judicial review and appeals.

## Public Policy and Public Education Branch

The Public Policy and Public Education Branch provides leadership and direction for the planning, development and evaluation of the Commission's public policy and public education functions. The Branch is responsible for external communications, international liaison, community consultations and media relations. The Branch prepares guidelines and written policies on the interpretation and application of provisions of the Code, researches a broad range of human rights, legal and social equity issues, advises individuals and organizations on human rights issues, provides support to the offices of the Chief Commissioner and Executive Director, and represents the Commission on intergovernmental committees, task forces and delegations. The Branch fosters understanding of and voluntary compliance with, the principles of the Code through a range of public education and communications initiatives.

## Corporate Services Branch

The Corporate Services Branch provides service to the Commission in the areas of human resources, operational planning, and finance and administration through the development and implementation of sound management policies and practices. Branch systems development and maintenance activities support the use of information technology within the Commission. The Learning Unit provides staff with training opportunities through the development and design of effective learning programs. The co-ordination of internal communications and the distribution of publications to the public are branch responsibilities. The Branch also ensures Commission compliance with the requirements of the Freedom of Information and Protection of Privacy Act and coordinates responses to Ombudsman enquiries. In partnership with other Branches, the Corporate Services Branch co-ordinates the implementation of the Commission's Organizational Improvement Initiatives.

## COMMISSIONERS

Section 27 of the Human Rights Code provides that the Commission be composed of no fewer than seven persons appointed by the Lieutenant Governor in Council.

The Chair of the Commission (Chief Commissioner) is a full-time position. Other members of the Commission serve on a part-time basis.

The Chief Commissioner chairs meetings of the Commission and the Vice-Chair presides over meetings of the Commission in the absence of the Chief Commissioner.

The Commissioners are selected to represent the diversity of Ontario, ensuring both complainant and respondent perspectives and preserving a balanced representation of groups protected under the Human Rights Code. In their decision-making, Commissioners are required to be impartial and to implement Ontario's public policy on human rights.

The following are biographical profiles of the Chief Commissioner and Commissioners of this year:

## Keith C. Norton (Chief Commissioner)

Keith Norton was appointed Chief Commissioner on July 18, 1996. He is an educator and a lawyer by training, having studied law at Queen's University in Kingston as well as receiving a diploma in education from the Ontario College of Education. Mr. Norton is a former Minister of Community and Social Services, Minister of Economics and Intergovernmental Affairs, Minister of Education and Minister of Health. As Minister of the Environment between 1981 and 1983, he became the first Canadian Cabinet Minister to be invited to testify before a Committee of the United States Senate. Throughout his career, Mr. Norton has championed issues related to persons with disabilities, senior citizens and persons in receipt of public assistance. He is a former President of the Canadian Human Rights Tribunal.

## Cheryl Blondell-King

Cheryl Blondell-King was appointed to the Commission in March, 1997. She is an Assistant Crown Attorney in the Ministry of the Attorney General. She formerly served as Criminal Duty Counsel with the Ontario Legal Aid Plan, where she advised and represented accused persons. Ms. Blondell-King worked for the Commission in the summer of 1989 as part of the team that created the Systemic Investigations Unit. She is vice-president of the Congress of Black Women.

#### **1arie-Elisabeth Brunet**

Ms. Brunet was appointed to the Commission in March, 1995. She is a freelance journalist who has done extensive work for the National Arts Centre's French Theatre department over the past several years. She also hosted and co-wrote the documentary series *Visontario* which aired on TVO for two years. A resident of Vanier, Ms. Brunet previously worked as a radio and television reporter for Radio-Canada, CJBC and CBLFT Toronto and as provincial coordinator for women's groups for Association canadienne française de l'Ontario, Ottawa. Ms. Brunet has been active in her community as a founding member of Comité Action de Sudbury.

## he Rev. William G. Cliff

Rev. William Grant Cliff was appointed Commissioner in March, 1997. He is the Rector of St. James' Hanover and Trinity Church in Durham. He is a former member of the University of Western Ontario's Senate, a Padre with the Royal Canadian Legion and a member of the Anglican Roman Relations Committee of the Diocese of Huron. A former Chaplain Intern at St. Joseph's Health Centre, he was trained at the University of Western Ontario and later served at St. Michael and All Angels Church in London.

## Aida F. Graff

Dr. Graff was appointed to the Commission in September, 1994. She is a research associate at the University of Toronto's Victoria College, where she served as Dean of Women from 1976 to 1990. She is currently President of the board of the Arab Community Centre of Toronto, a settlement and social service agency. She has served on the Ontario Anti-Racism Working Group, and has been a member of the Ontario Cabinet Round Table on Anti-Racism.

#### Mitra S. Manesh

Mitra S. Manesh was appointed Commissioner in March, 1997. She is the Executive Director of the Peel Multicultural Council, a member of the Ministry of Community and Social Services' Policy Advisory Council, and she co-chairs the Ministry of Citizenship, Culture and Recreation's Policy Advisory Council. She is also a member of the Board of Directors of the Ontario Council of Agencies Serving Immigrants, Chair of the Peel Committee Against Woman Abuse, and a member of the United Way's Speakers' Bureau.

## Robert Milbourne

Mr. Milbourne was appointed to the Commission in July 1992. A graduate of metallurgical engineering, Mr. Milbourne joined Stelco Steel in 1963 and has worked in various positions leading up to President, Chief Operating Officer and member of the Board of Directors. He is a member of a number of associations, including the Canadian Institute of Mining and Metallurgy, and was heavily involved in establishing the Occupational Health Clinic for Ontario Workers.

## **Richard Miles**

Before his appointment to the Commission in July, 1994, Mr. Miles held senior administrative positions with the Ministry of Community and Social Services, the Federal Secretariat for

Disabled Persons Office, and the Handicapped Action Group Incorporated in Thunder Bay. Mr. Miles was appointed by the Minister of Citizenship, Culture & Recreation to the recently concluded task force which conducted a procedural review of the Ontario Human Rights Commission.

#### Iarnie Paikin

Marnie Paikin was appointed Commissioner in September, 1996. She is past President of the Canadian Council of Christians and Jews and a recipient of the Province of Ontario's "Outstanding Woman Award." She is a recipient of Her Majesty the Queen's Silver Jubilee (Canadian) Medal and the Human Relations Award of the Canadian Council of Christians and Jews. Ms. Paikin is currently Director of Atomic Energy of Canada Ltd.

# **Tables**

Table 1: Complaints by Region of Registration and Ground

|                                 | Race or colour | Ethnic Origin | Creed   | Sex & Pregnancy | Sexual Harassment | Sexual Orientation | Age       | Marital Status | Family Status | Handicap  | Public Assistance | Record of Offence | Reprisal | No Grounds | reach of Settlement | Total | Percentage |
|---------------------------------|----------------|---------------|---------|-----------------|-------------------|--------------------|-----------|----------------|---------------|-----------|-------------------|-------------------|----------|------------|---------------------|-------|------------|
| PERCENTAGE                      | 21             | 4             | 2       | 13              | 14                | 3                  | 7         | 2              | 2             | 29        | 1                 | 0                 | 2        | 8          | 0                   | 1916  | 100        |
| TOTAL                           | 404            | 71            | 35      | 241             | 46<br>264         | 2<br>54            | 27<br>129 | 5<br>39        | 8<br>45       | 86<br>555 | 2                 | 1                 | —<br>41  | -          | 1                   | 332   | 17         |
| TORONTO WEST                    | 108            | 18<br>7       | 2<br>12 | 41<br>28        | 13                | 2                  | 30        | 2              | 4             | 58        | 4                 | _                 | 3        | 3          |                     | 219   | 11         |
| TORONTO CENTRAL                 | 131<br>39      | 24            | 12      | 38              | 73                | 21                 | 22        | 5              | 7             | 150       | 6                 | -                 | 25       | 3          | _                   | 517   | 27         |
| SOUTHWESTERN<br>TORONTO CENTRAL | 74             | 9             | 2       | 54              | 79                | 16                 | 28        | 13             | 13            | 138       | 11                | _                 | 3        | 2          | _                   | 442   | 23         |
| NORTHERN                        | 13             | 3             | .3      | 34              | 24                | 1                  | 1         | 6              | 6             | 43        | 3                 | _                 | 8        | _          | _                   | 145   | 8          |
| EASTERN                         | 39             | 10            | 4       | 46              | 29                | 12                 | 21        | 8              | 7             | 80        | 2                 | 1                 | 2        | _          |                     | 261   |            |

Table 2: Complaints Received by Provision and Ground

| CEDIVIOSO   |                |               |       |           |                   |                    |     |                |               |          |                   |                   |          |            |               |       |  |
|-------------|----------------|---------------|-------|-----------|-------------------|--------------------|-----|----------------|---------------|----------|-------------------|-------------------|----------|------------|---------------|-------|--|
| SERVICES    | 70             | 14            | 9     | 35        | 5                 | 18                 | 12  | 6              | 3             | 102      | _                 |                   |          | 4          | _             | 278   | 15   |
| HOUSING     | 39             | 3             |       | 8         | 4                 | 4                  | 11  | 3              | 20            | 34       | 28                |                   |          | _          | _             | 154   | 8  |
| CONTRACTS   | 1              | -             |       | 1         | _                 |                    | _   | 1              | _             | _        | _                 | _                 |          |            |               | 3     |  |
| EMPLOYMENT  | 288            | 54            | 25    | 196       | 255               | 32                 | 103 | 29             | 22            | 414      |                   | 4                 |          | 4          |               | _     | 0  |
| VOCATIONAL  |                |               |       |           |                   |                    | 100 | 25             | 22            | 414      |                   | 1                 | _        | 4          | _             | 1423  | 74   |
| ASSOCIATION | .6             | _             | 1     | 1         |                   |                    | 3   |                |               | _        |                   |                   |          |            |               |       |  |
| REPRISAL    |                |               | _     |           |                   |                    | ٥   | _              | _             | 5        | _                 | -                 | _        | _          | _             | 16    | 1  |
| BREACH OF   |                |               |       |           | _                 | _                  |     | . —            | _             | _        | _                 | -                 | 41       | _          | _             | 41    | 2  |
| SETTLEMENT  |                |               |       |           |                   |                    |     |                |               |          |                   |                   |          |            |               |       |  |
|             | -              | _             | _     | _         | _                 | _                  | _   |                |               |          | -                 | _                 | -        | _          | 1             | 1     | 0  |
|             | our            | -E            | Creed | tot       | in a              | 0.0                | Age | ns             | SII           | ф        | 93                | gy.               | -        | S          | =             | _     | au   |
|             | Race or colour | Ethnic Origin | Ü     | Pregnancy | SSIII             | ntat               | ≪   | Marital Status | Family Status | Handicap | stano             | ffenc             | Reprisal | No Grounds | of Settlement | Total | Percentage   |
|             | 10 eg          | Ē             |       | 5         | lara              | Orie               |     | rital          | ni y          | Hai      | Assis             | 000               | Re       | Gre        | ettle         |       | agua de la companya d |
|             | Ra             | GL)           |       | Sex &     | Sexual Harassment | Sexual Orientation |     | ¥              | G.            |          | Public Assistance | Record of Offence |          | ×          | of S          |       | 9  |
|             |                |               |       | Š         | Sex               | Se                 |     |                |               |          | P                 | Rec               |          |            | Breach        |       |  |
|             |                |               |       |           |                   |                    |     |                |               |          |                   |                   |          |            | a Le          |       |  |

# Table 3: Settlements Effected by Ground

| RACE OR COLOUR     | 70              | 14                             | 9                        | 35   | 5                              | 18                             | 12                              | 6                    | 3                                   | 102                    |  |                   |          | 4          |                      | 070   | 15         |
|--------------------|-----------------|--------------------------------|--------------------------|--|--------------------------------|--------------------------------|---------------------------------|----------------------|-------------------------------------|------------------------|--|-------------------|----------|------------|----------------------|-------|------------|
| ETHNIC ORIGIN      | 70              | 14                             | 9                        | 30   | 5                              | 10                             | 12                              | 0                    | 3                                   | 102                    | _  | _                 |          | 4          |                      | 278   | 15         |
| CREED              |                 |                                |                          |  |                                |                                |                                 |                      |                                     |                        |  |                   |          |            |                      |       |            |
| SEX & PREGNANCY    | 39              | 3                              | _                        | 8  | 4                              | 4                              | 11                              | 3                    | 20                                  | 34                     | 28   | -                 | _        | _          |                      | 154   | 8          |
| SEXUAL HARASSMENT  | 1               | _                              | _                        | 1  | _                              | _                              | _                               | 1                    |                                     | -                      | -  | _                 | _        | _          | _                    | 3     | 0          |
| SEXUAL ORIENTATION | 288             | 54                             | 25                       | 196  | 255                            | 32                             | 103                             | 29                   | 22                                  | 414                    |  | 1                 |          | 4          | _                    | 1423  | 74         |
| AGE                |                 |                                |                          |  |                                |                                |                                 |                      |                                     |                        |  |                   |          |            |                      |       |            |
| MARITAL STATUS     | 6               | _                              | 1                        | 1  | _                              | _                              | 3                               |                      | _                                   | 5                      | _  | _                 | _        | _          | _                    | 16    | 1          |
| FAMILY STATUS      | _               | _                              | -                        | _  |                                |                                |                                 | _                    |                                     | _                      |  |                   | 41       | -          | _                    | 41    | 2          |
| HANDICAP           |                 |                                |                          |  |                                |                                |                                 |                      |                                     |                        |  |                   |          |            |                      |       |            |
| PUBLIC ASSISTANCE  |                 |                                |                          |  |                                |                                |                                 |                      |                                     |                        |  |                   |          |            | 4                    | 4     | 0          |
| OTHER              | _               | _                              |                          | _  | _                              | _                              |                                 | _                    | word                                |                        | _  |                   |          |            | ı                    | '     | 0          |
|                    | e s             | ges                            | E.                       | À  | ted                            | staff                          | ents                            | ents                 | spic                                | ıanı                   | <u>a</u>                                   | nce               | Reprisal | spu        | nent                 | Total | 200        |
|                    | general damages | lama                           | r fac                    | r fac  | еше                            | Jent                           | un no                           | E I                  | s reci                              | nplair                 | poli                                       | Record of Offence | Rep      | No Grounds | ttlen                |       | Percentage |
|                    | al c            | ing d                          | o qo                     | o qo   | imp                            | pouc                           | or do                           | of do                | ant's                               | тоэ                    | ment                                       | o pu              |          | No         | of Se                |       | Pe         |
|                    | gene            | Complainants receiving damages | Offer of job or facility | next   | Affirmative action implemented | Seminars with respondent staff | Review of policies or documents | ssuance of documents | Correction of complainant's records | apology to complainant | lage                                       | Reco              |          |            | Breach of Settlement |       |            |
|                    | چ<br><u>ت</u>   | nts ro                         | Offe                     | for,   | ve ac                          | S Wit                          | poli                            | Issua                | E 00                                | olode                  | Шаг  |                   |          |            | 8                    |       |            |
|                    | Specific &      | aina                           |                          | tion   | mati                           | ninar                          | Jo M                            |                      | 0 UC                                | -                      | o uo                                       |                   |          |            |                      |       |            |
|                    | S               | dmo                            |                          | idera  | Affir                          | Sen                            | Revie                           |                      | rection                             | Letter                 | arati                                      |                   |          |            |                      |       |            |
|                    |                 | ت                              |                          | cons   |                                |                                |                                 |                      | Cor                                 |                        | deci                                       |                   |          |            |                      |       |            |
|                    |                 |                                |                          | f, 0r  |                                |                                |                                 |                      |                                     |                        | Written declaration of management policies |                   |          |            |                      |       |            |
|                    |                 |                                |                          | Offer of, or consideration for, next job or facility |                                |                                |                                 |                      |                                     |                        | ×  |                   |          |            |                      |       |            |
|                    |                 |                                |                          | 9  |                                |                                |                                 |                      |                                     |                        |  |                   |          |            |                      | L     |            |
|                    |                 |                                |                          |  |                                |                                |                                 |                      |                                     |                        |  |                   |          |            |                      |       |            |

Table 4: Complaints Closed by Provision, Disposition and Ground

|   |                |               |       |                 | S                 | S                  |     |                |               |          | _                 |                   | Reprisal, Breach of Settlement, No Grounds |       |            |
|---|----------------|---------------|-------|-----------------|-------------------|--------------------|-----|----------------|---------------|----------|-------------------|-------------------|--|-------|------------|
|   | Race or colour | Ethnic origin | Creed | Sex & Pregnancy | Sexual Harassment | Sexual Orientation | Age | Marital Status | Family Status | Handicap | Public Assistance | Record of Offence | nent, No Grounds                           | Total | Percentage |
| Total   | 2              | 1             | -     | 3               | -                 | -                  | 2   | -              | -             | 7        | -                 | -                 | 39   | 55    | 100        |
| lithdrawn   | 1              | -             | _     | 2               | _                 | -                  | 1   | _              | -             | 3        |                   | -                 | 13   | 20    | 36         |
| ismissed or not Pursued                             | 1              | 1             | 1     |                 | -                 | -                  | _   | -              | _             | 2        | -                 | _                 | 18   | 23    | 42         |
| ettled  | _              | -             | _     | 1               | -                 |                    | 1   | -              | _             | 2        | _                 | _                 | 8  | 12    | 22         |
| oard Appointed                                      | -              | -             | _     | _               | _                 |                    | _   | _              | _             | _        | _                 | _                 | _  | 0     | 0          |
| ONTRACTS, VOCATIONAL AS<br>EPRISALS, BREACH OF SETT |                |               |       |                 |                   |                    |     |                |               |          |                   |                   |  |       |            |
| Total   | 61             | 9             | _     | 36              | 6                 | 15                 | 11  | 7              | 4             | 96       | _                 | _                 | 9  | 264   | 100        |
| /ithdrawn   | 26             | 4             | 4     | 16              | 4                 | 6                  | 6   | _              | 3             | 34       | _                 | _                 | 1  | 104   | 54         |
| ismissed or not Pursued                             | 20             | 2             | 1     | 10              | 1                 | 3                  | 5   | 2              | _             | 28       | _                 |                   | 8  | 80    | 30         |
| ettled  | 15             | 3             | 3     | 10              | 1                 | 6                  | _   | 5              | 1             | 34       | _                 | _                 |  | 78    | 30         |
| ERVICES oard Appointed                              | _              | _             | _     | _               | _                 | 2                  | _   |                |               | _        | _                 | _                 |  | 2     | 1          |
| Total   | 38             | 10            | _     | 9               | 5                 | 2                  | 22  | 7              | 35            | 28       | 39                | _                 | 1  | 196   | 100        |
| /ithdrawn   | 21             | 4             | _     | 6               | 2                 | 2                  | 19  | 3              | 16            | 13       | 18                | _                 | 1  | 105   | 54         |
| ismissed or not Pursued                             | 3              | 6             | _     | _               | 3                 | _                  | _   | 1              | 4             | 3        | 5                 | _                 |  | 25    | 13         |
| ettled  | 12             |               |       | 3               | _                 | _                  | 3   | 3              | 3<br>12       | 12       | 1                 | _                 |  | 60    | 31         |
| CCOMMODATION oard Appointed                         | 2              |               |       |                 |                   |                    |     |                | 2             |          |                   |                   |  |       |            |
| Total   | 332            | 54            | 46    | 241             | 234               | 30                 | 121 | 27             | 24            | 429      | _                 | 1                 | 4  | 1543  | 100        |
| Vithdrawn   | 142            | 18            | 18    | 108             | 92                | 13                 | 50  | 9              | 9             | 167      | _                 | 1                 | 1  | 628   | 41         |
| Dismissed or not Pursued                            | 106            | 15            | 14    | 46              | 32                | 7                  | 33  | 8              | 6             | 121      | _                 | _                 | 3  | 391   | 25         |
| ettled  | 83             | 21            | 12    | 83              | 105               | 10                 | 33  | 9              | 9             | 139      | _                 | _                 | _  | 504   | 33         |
|   |                |               | 2     |                 |                   |                    |     |                |               | 2        |                   |                   |  | 20    | 1          |

Table 5: Employment Complaints Closed by Disposition and Ground

| RECRUITMENT & HIRING     |                |               |       |                 |                    |     |                |               |          |                   |  |         |            |
|--------------------------|----------------|---------------|-------|-----------------|--------------------|-----|----------------|---------------|----------|-------------------|--|---------|------------|
| Board Appointed          | _              | _             |       |                 |                    | _   | _              |               | 1        |                   | _  | 1       | 1          |
| Settled                  | 10             | 1             | 1     | 17              | 1                  | 11  | 2              | 4             | 13       | _                 |  | 60      | 40         |
| Dismissed or not Pursued | 9              | 1             |       | 5               | _                  | 2   | 1              | 1             | 8        | _                 |  | 27      | 18         |
| Withdrawn                | 14             | 4             | 1     | 16              | 4                  | 9   | 1              | _             | 12       |                   | _  | 61      | 41         |
| Total                    | 33             | 6             | 2     | 38              | 5                  | 22  | 4              | 5             | 34       | _                 |  | 149     | 100        |
| Percentage               | 22             | 4             | 1     | 26              | 3                  | 15  | 3              | 3             | 23       | _                 | _  | 100     | 100        |
|                          |                |               |       |                 |                    |     |                |               |          |                   |  |         |            |
| TERMINATION              |                |               |       |                 |                    |     |                |               |          |                   |  |         |            |
| Board Appointed          | 1              | _             |       | 3               | _                  | 4   | 1              | -             | 1        |                   | _  | 10      | 1          |
| Settled                  | 45             | 7             | 5     | 40              | 7                  | 12  | 4              | 2             | 81       | _                 | _  | 203     | 27         |
| Dismissed or not Pursued | 55             | 10            | 7     | 29              | 5                  | 17  | 4              | 3             | 75       | _                 | 1  | 206     | 27         |
| Withdrawn                | 91             | 11            | 9     | 71              | 4                  | 32  | 6              | 7             | 106      | 1                 | _  | 338     | 45         |
| Total                    | 192            | 28            | 21    | 143             | 16                 | 65  | 15             | 12            | 263      | 1                 | 1  | 757     | 100        |
| Percentage               | 25             | 4             | 3     | 19              | 2                  | 9   | 2              | 2             | 35       |                   | _  | 100     |            |
|                          |                |               |       |                 |                    |     |                |               |          |                   |  |         |            |
| DURING EMPLOYMENT        |                |               |       |                 |                    |     |                |               |          |                   |  |         |            |
| Board Appointed          | _              |               | 2     | 1               | _                  | 1   |                |               |          | _                 | _  | 4       | 1          |
| Settled                  | 28             | 13            | 6     | 26              | 2                  | 10  | 3              | 3             | 45       | _                 | _  | 136     | 34         |
| Dismissed or not Pursued | 42             | 4             | 7     | 12              | 2                  | 14  | 3              | 2             | 38       |                   | 2  | 126     | 31         |
| Withdrawn                | 37             | 3             | 8     | 21              | 5                  | 9   | 2              | 2             | 49       | -                 | 1  | 137     | 34         |
| Total                    | 107            | 20            | 23    | 60              | 9                  | 34  | 8              | 7             | 132      | ~~~               | 3  | 403     | 100        |
| Percentage               | 27             | 5             | 6     | 15              | 2                  | 8   | 2              | 2             | 33       | _                 | 1  | 100     |            |
| TOTAL                    | 332            | 54            | 46    | 241             | 30                 | 121 | 27             | 24            | 429      | 1                 | 4  | 1309    |            |
|                          |                |               |       |                 |                    |     |                |               |          |                   |  |         |            |
|                          | =              | . <u>=</u>    | D     | 2               | u.                 | Age | S              | 22            | эр       | 8                 | S  | <u></u> | 9          |
|                          | Race or colour | Ethnic origin | Creed | Sex & Pregnancy | Sexual Orientation | A   | Marital Status | Family Status | Handicap | Record of Offence | Reprisal, Breach of Settlement, No Grounds | Total   | Percentage |
|                          | e 01           | thnic         |       | Preç            | Orien              |     | rital          | mily          | Ha       | 1 of G            | <b>1</b> 0 Gr                              |         | Perc       |
|                          | Raci           | Ш             |       | 65<br>×         | kual               |     | Ma             | Fa            |          | cord              | nt.  |         |            |
|                          |                |               |       | S               | Se                 |     |                |               |          | Re                | leme                                       |         |            |
|                          |                |               |       |                 |                    |     |                |               |          |                   | Sett                                       |         |            |
|                          |                |               |       |                 |                    |     |                |               |          |                   | h of                                       |         |            |
|                          |                |               |       |                 |                    |     |                |               |          |                   | reac                                       |         |            |
|                          |                |               |       |                 |                    |     |                |               |          |                   | al, B                                      |         |            |
|                          |                |               |       |                 |                    |     |                |               |          |                   | pris                                       |         |            |
|                          |                |               |       |                 |                    |     |                |               |          |                   | H  |         |            |

# Table 6: Employment Complaints Closed by Type of Work

|  |       | Race or colour | Ethnic origin | Creed  | Sex & Pregnancy | Sexual Harassment | Sexual Orientation | Age     | Marital Status | Family Status | Handicap | Record of Offence | Reprisal, Breach of Settlement, No Grounds | Total |  |
|--|-------|----------------|---------------|--------|-----------------|-------------------|--------------------|---------|----------------|---------------|----------|-------------------|--|-------|--|
|  | Total | 332            | 54            | 46     | 241             | 234               | 30                 | 121     | 27             | 24            | 429      | 1                 | 4  | 1543  |  |
| Unspecified                            |       | 2              | _             |        | 1               | 1                 |                    | 1       |                | 1             | 5        |                   |  | 11    |  |
| Services<br>Labour, general            |       | 42<br>71       | 12<br>18      | 8<br>6 | 40              | 30                | 3                  | 22      | 6              | 5             | 101      | _                 | 1  | 303   |  |
| Operatives                             |       | 25             | 5             | 3      | 8<br>33         | 6<br>57           | 2<br>7             | 6<br>10 | 3              | 4             | 48<br>50 | _                 | _  | 103   |  |
| Craft & Forepersons                    |       | 19             | 4             | 2      | 7               | 11                | 3                  | 4       |                |               | 37       | -                 | _  | 87    |  |
| Clerical                               |       | 41             | 6             | 7      | 39              | 59                | 4                  | 11      | 8              | 6             | 58       |                   | -  | 239   |  |
| Manageriai, recinicai<br>Sales         |       | 30             | 2             | 7      | 36              | 30                | 1                  | 15      | 1              | 2             | 33       |                   |  | 157   |  |
| Professional,<br>Managerial, Technical |       | 102            | 7             | 13     | 77              | 40                | 10                 | 52      | 9              | 6             | 97       | 1                 | 3  | 417   |  |

# Table 7: Complaints Closed by Industry

| Natural Resources                          | 2              | _             | _     | 5               | 2                 | _                  | _   | _              | _             | 7        | _                 | _                 | -   | 16    | 1          |
|--|----------------|---------------|-------|-----------------|-------------------|--------------------|-----|----------------|---------------|----------|-------------------|-------------------|---|-------|------------|
| MANUFACTURING                              |                |               |       |                 |                   |                    |     |                |               |          |                   |                   |   | į     |            |
| Metals, parts, machinery                   | 20             | 1             | 1     | 7               | 7                 | -                  | 3   | Melouse        | 2             | 25       |                   | _                 | 2   | 68    |            |
| Food, tobacco                              | 7              |               | _     | 4               | 1                 |                    | 3   |                | _             | 16       | _                 | _                 |   | 31    |            |
| Wood, furniture, paper                     | 4              | _             | 1     | 5               | 6                 | _                  | 1   | _              | _             | 7        | _                 |                   | _   | 24    |            |
| Automotive, aircraft                       | 9              | _             | 1     | 4               | 5                 | _                  | 4   | 1              | _             | 10       | _                 | _                 | 2   | 36    |            |
| Electrical                                 | 6              | _             | 1     | 2               | 3                 |                    | 2   | 1              | _             | 7        | _                 | _                 | 1   | 23    |            |
| Others                                     | 36             | 6             | 8     | 18              | 19                | 6                  | 12  | 4              | 2             | 59       | _                 | _                 | 5   | 175   |            |
| Subtotal                                   | 82             | 7             | 12    | 40              | 41                | 6                  | 25  | 6              | 4             | 124      | 0                 | 0                 | 10  | 357   | 17         |
| CONSTRUCTION                               | 4              | 1             | _     | 4               | 2                 | _                  | 2   | _              | _             | 9        |                   |                   | -   | 22    | 1          |
| Transportation, Utilities &                |                |               |       |                 |                   |                    |     |                |               |          |                   |                   |   |       |            |
| Communication                              | 20             | 1             | _     | 13              | 4                 | 2                  | 2   | 2              | _             | 24       |                   | _                 | 1   | 69    | 3          |
| Trade & retail                             | 49             | 13            | 5     | 45              | 39                | 2                  | 17  | 3              | 6             | 63       | _                 |                   | 2   | 244   | 12         |
| Finance, Insurance &<br>Real Estate        | 46             | 11            | 1     | 20              | 18                | 6                  | 31  | 8              | 37            | 52       | 35                | 1                 | 5   | 271   | 13         |
| COMMUNITY, BUSINESS &<br>Personal Services |                |               |       |                 |                   |                    |     |                |               |          |                   |                   |   |       |            |
| Schools, colleges, universities            | 27             | 3             | 11    | 15              | 12                | 5                  | 22  | 5              | _             | 36       | _                 | _                 | 6   | 142   |            |
| Medical                                    | 43             | 4             | 5     | 22              | 8                 | 5                  | 7   | 2              | 1             | 56       | _                 | _                 | 5   | 158   |            |
| Employment agencies                        | 2              | 1             | _     | 4               | _                 | _                  | 2   | _              | _             | 3        |                   |                   | —   | 12    |            |
| Hotels, restaurants                        | 29             | 5             | 1     | 32              | 47                | 6                  | 10  | 3              | 3             | 36       | _                 | _                 | 2   | 174   |            |
| Others                                     | 70             | 23            | 13    | 55              | 55                | 11                 | 15  | 8              | 4             | 71       | 3                 | _                 | 9   | 337   |            |
| Subtotal                                   | 171            | 36            | 30    | 128             | 122               | 27                 | 56  | 18             | 8             | 202      | 3                 | 0                 | 22  | 823   | 40         |
| Public Administration                      | 45             | 4             | 6     | 24              | 8                 | 5                  | 16  | 2              | 7             | 62       | _                 |                   | 12  | 191   | 9          |
| Unspecified/Not applicable                 | 14             | 1             | 1     | 10              | 9                 | 1                  | 7   | 2              | 1             | 17       | 1                 | _                 | 1   | 65    | 3          |
| TOTAL                                      | 433            | 74            | 55    | 289             | 245               | 49                 | 156 | 41             | 63            | 560      | 39                | 1                 | 53  | 2058  | 100        |
|  | Race or colour | Ethnic origin | Creed | gnancy          | ssment            | intation           | Age | Marital Status | Family Status | Handicap | istance           | Offence           | irounds                                   | Total | Percentage |
|  | Race of        | Ethni         |       | Sex & Pregnancy | Sexual Harassment | Sexual Orientation |     | Marita         | Family        | Ĩ        | Public Assistance | Record of Offence | Reprisal, Breach of Sellement, No Grounds |       | Pe         |
|  |                |               |       |                 | Se                | S                  |     |                |               |          |                   | E.                | Seller                                    |       |            |
|  |                |               |       |                 |                   |                    |     |                |               |          |                   |                   | each of                                   |       |            |
|  |                |               |       |                 |                   |                    |     |                |               |          |                   |                   | Bre                                       |       |            |
|  |                |               |       |                 |                   |                    |     |                |               |          |                   |                   | isal,                                     |       |            |

#### PLEASE NOTE

These policies reflect the Commission's interpretation of the *Ontario Human Rights Code* provisions and should be read in conjunction with the specific provisions of the Code.

## **New Policies**

Policy on Creed and the Accommodation of Religious Observances

The Ontario Human Rights Code (the "Code"), states that it is public policy in Ontario to recognize the inherent dignity and worth of every person and to provide for equal rights and opportunities without discrimination. The Code aims at creating a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and feels able to contribute to the community.

Creed is a prohibited ground of discrimination under the Code. Every person has the right to equal treatment with respect to services, goods, facilities, employment, the occupancy of accommodation, the right to enter into contracts and the right to join trade unions or other vocational associations, without discrimination because of creed.

These policy guidelines set out the position of the Ontario Human Rights Commission with respect to creed and the accommodation of religious observances related to a person's creed.

## Application of This Policy

The Human Rights Code applies to:

- i) the workplace (including recruiting, application forms, interviews, promotions, office dress codes and shift schedules);
- ii) services, goods and facilities (schools, school boards, shops, restaurants, hospitals, schools, correctional facilities and insurance services):
- iii) the occupancy of accommodation (including rental accommodation such as apartments, college residences, hotel/motel facilities and condominium housing);
- iv) contracts (verbal or written agreements), and
- v) membership in occupational associations and trade unions.

reed1

Creed is not a defined term in the *Code*. The Ontario Human Rights Commission has adopted the following definition of creed:

Creed is interpreted to mean "religious creed" or "religion." It is defined as a professed system and confession of faith, including both beliefs and observances or worship. A belief in a God or gods, or a single supreme being or deity is not a requisite.

Religion is broadly accepted by the Commission to include, for example, non-deistic bodies of faith, such as the spiritual faiths/practices of aboriginal cultures, as well as bona fide newer religions (assessed on a case by case basis).

The existence of religious beliefs and practices are both necessary and sufficient to the meaning of creed, if the beliefs and practices are sincerely held and/or observed.

"Creed" is defined subjectively. The *Code* protects personal religious beliefs, practices or observances, even if they are not essential elements of the creed,<sup>2</sup> provided they are sincerely held.

It is the Commission's position that every person has the right to be free from discriminatory or harassing behaviour that is based on religion or which arises because the person who is the target of the behaviour does not share the same faith. This principle extends to situations where the person who is the target of such behaviour has no religious beliefs whatsoever, including atheists and agnostics who may, in these circumstances, benefit from the protection set out in the *Code*.<sup>3</sup>

In either situation, creed must be involved—either because the person who is the subject of the discrimination is seeking to practice his or her own religion, or because the person who is harassing or discriminating is trying to impose their creed on someone else. In both cases, creed must be involved.

Creed does *not* include secular, moral or ethical beliefs or political convictions.<sup>4</sup> This policy does not extend to religions that incite hatred or violence against other individuals or groups, <sup>5</sup> or to practices and observances that purport to have a religious basis but which contravene international human rights standards or criminal law.<sup>6</sup>

## Equal Treatment On the Ground of Creed

Freedom of religion is the basic principle that informs the right to equal treatment under the Code on the ground of creed.7 First, this implies that the law can require measures to facilitate the practice of religious observances.8 Second, it also means that no person can force another to accept or comply with religious beliefs or practices.

This dual aspect of equality is emphasized by case law that has consistently protected freedom of religion and expressions of religious beliefs as well as non-beliefs and refusals to participate in religious practices.9 According to a 1989 board of inquiry, no matter how convinced a person may be that he or she has a religious message that others should hear and heed, the Code prohibits the imposition of that message onto others. "In the workplace, a religiously militant employer is no more entitled to impose his or her version of religious enlightenment on employees than a sexually militant employer is entitled to impose his or her sexual ideas or wishes."10

#### "Discrimination"

#### 1. Discrimination and Harassment

In Dufour v. J. Roger Deschamps Comptable Agréé, the Ontario board of inquiry stated that:

[h]arassment or discrimination against someone because of religion is a severe affront to that person's dignity, and a denial of the equal respect that is essential to a liberal democratic society.11

Discrimination because of creed includes any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect the nullification or impairment of the recognition of human rights and fundamental freedoms on an equal basis.12

Harassment on the grounds of creed is a form of discrimination. It involves conduct or comments concerning religious beliefs or practices which are known or ought to known to be offensive. A single incident may constitute "harassment" and may create a poisoned environment if it is substantial or significant enough.

**Example:** Management makes an employee's religious practices or beliefs the subject of jokes or derogatory comments or by other employees. This conduct is a form of harassment and the employee has the right to complain to the Commission.

#### 2. Direct and Indirect Discrimination

Discriminatory practices that fail to meet any statutory justifica/ tion test<sup>13</sup> are illegal and will be struck down.

**Example:** Unless the client-employer is a "special interest organization,"<sup>14</sup> an employment agency that screens out all persons who do not share the employer-client's religion is acting illegally. Such practices cannot be justified on the grounds of customer preference.<sup>15</sup>

**Example:** A public school that gives priority to the Lord's Prayer as part of opening and closing exercises fails to treat non-Christians equally.<sup>16</sup>

Discrimination can also be indirect.

**Example:** A landlord prefers renting to tenants whose religion is the same as the landlord's. If a tenant refuses to sublet the apartment based on the landlord's "rule," then the landlord may be also be named as a respondent to a human rights complaint.<sup>17</sup>

#### 3. Constructive discrimination

Constructive discrimination arises when a neutral requirement, qualification or factor has an adverse impact on members of a group of persons who are identified by a prohibited ground of discrimination under the *Code*. Because of its adverse impact, this is said to result in "constructive discrimination." Section 11(1) of the *Code* provides that discrimination occurs:

Where a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member.

Unless an exception is provided by law, constructive discrimination cannot be tolerated unless the employer takes reasonable steps to accommodate the affected person. A prima facie case of constructive discrimination is established if it can be shown that an individual has been subject to an exclusion, restriction or preference that has had an adverse impact on members of a group protected by the Code.

Typically, in the context of creed, issues arise in the areas of:

- i) dress codes
- ii) break policies
- recruitment and job applications iii)
- iv) flexible scheduling
- V) rescheduling
- vi) religious leave

We will deal each of these special cases in Part 7.

#### "Needs of the Group"

The term "needs of the group" means the needs of the religious group to which an individual belongs. The group's needs must be assessed in order to accommodate the individual.18 Courts have looked to the accepted religious practices and observances that are part of a given religion or creed in order to assess those needs.

**Example:** School teachers of the Jewish faith request a paid day of leave in order to observe Yom Kippur. In order to assess the needs of the group, the employer should seek information about the tenets of the Jewish faith, which establish that observant Jews cannot work on Yom Kippur. 19

## The Duty to Accommodate

The Code provides the right to be free from discrimination, and there is a general corresponding duty to protect the right: the "duty to accommodate." The duty arises when a person's religious beliefs conflict with a requirement, qualification or practice. The Code imposes a duty to accommodate based on the needs of the group of which the person making the request is a member. Accommodation may modify a rule or make an exception to all or part of it for the person requesting accommodation.

Subsection 11(2) of the *Code* imposes the duty to accommodate in cases of constructive discrimination:

11(2). The Commission, the board of inquiry or a court shall not find that a requirement, qualification or factor is reasonable and bona fide in the circumstances unless it is satisfied that the needs of the group of which the person is a member cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

#### 1. Rights and Duties

Both the people responsible for providing the accommodation and the person requesting it have rights and responsibilities during accommodation. We list some of these below by way of example:

# FOR THE PERSON REQUESTING ACCOMMODATION (person requesting)

# FOR THE PERSON OR ORGANIZATION RESPONSIBLE FOR PROVIDING ACCOMMODATION (person responsible)

Person requesting:

Take the initiative to request accommodation

Person responsible:

Respect the dignity of the person seeking accommodation

Person requesting:

Explain why accommodation is required

Person responsible:

Assess the need for accommodation based on the needs of the group of which the person is a member.<sup>20</sup>

Person requesting:

Provide notice of request in writing, and allow a reasonable time for reply

#### Person responsible:

Reply to the request within a reasonable time

#### Person requesting:

Explain what measures of accommodation are required

#### Person responsible:

Grant requests related to the observance of religious practices

#### Person requesting:

Deal in good faith

#### Person responsible:

Deal in good faith

#### Person requesting:

Be flexible and realistic

#### Person responsible:

Consider alternatives

#### Person requesting:

The individual may request details of the cost of accommodation if undue hardship may be a factor

#### Person responsible:

If accommodation is not possible because of undue hardship, explain this clearly to the person concerned and be prepared to demonstrate why this is so.

Sometimes, it may not be possible completely to resolve the conflict without causing undue hardship to the person responsible for providing the accommodation. A measure of accommodation may be acceptable if meets the needs of the person, to the greatest extent possible, short of undue hardship, and if it respects the dignity of the person requiring the accommodation.

#### 2. Unions and the Duty to Accommodate

In the case of discrimination in the workplace, both management and the union have a duty to accommodate. In *Central Okanagan School District No. 23 v. Renaud*<sup>21</sup> the Court noted that although the principle of equal liability applies, the employer has charge of the workplace and will be in a better position to formulate measures of accommodation. The employer, therefore, can be expected to initiate the process of taking measures to accommodate an employee. Nevertheless, the Court also noted that they will not absolve a union of its duty if it fails to put forward alternative measures that are available. In short, when a union is a co-discriminator with an employer it shares the obligation to remove or alleviate the source of the discriminatory effect.<sup>22</sup>

**Example:** Mr. Renaud, a school custodian, complained that the school board and the union had failed to agree on how to modify Mr. Renaud's shift hours. As a Seventh Day Adventist, he was unable to work Friday afternoons. It was decided that the union, together with the employer, had a duty to accommodate Mr. Renaud, short of undue hardship. Mr. Justice Sopinka wrote that the union may be liable in two situations:

...first, [the union] may cause or contribute to the discrimination by participating in the formulation of the work rule that has a discriminatory effect on the complainant. This will generally be the case if the rule is a provision in the collective agreement;

second, a union may be liable if it impedes the reasonable efforts of an employer to accommodate.<sup>23</sup>

In Gohm v. Domtar<sup>24</sup> the employer agreed to accommodate Mrs. Gohm by rescheduling her to work Sunday instead of Saturday, if she would not receive premium pay as provided by the collective agreement. The employer's attempt was blocked by the union. In finding that the union had discriminated against the complainant, the Ontario Divisional Court set out the concept of "equal partnership":

Discrimination in the workplace is everybody's business. There can be no hierarchy of responsibility ... companies, unions and persons are all in a primary and equal position in a single line of defence against all types of discrimination. To conclude otherwise would fail to afford to the Human Rights Code the broad purposive intent that is mandated. Any interpretation short of this would

... be inconsistent with the philosophy and policy enunciated by the Supreme Court of Canada in O'Malley v. Simpson-Sears 25

## 6. The Standard of "Undue Hardship"

The duty to accommodate is limited to those steps that may be required to accommodate, short of undue hardship. The burden of proving undue hardship lies with the person responsible for providing the accommodation. Each option should be examined to decide whether undue hardship will result. In determining whether or not an accommodation measure creates undue hardship, the following factors should be considered.

Cost: This includes the actual, present financial cost of carrying out an accommodation measure, as well as any reasonably foreseeable costs which may arise. The cost to the person responsible for providing the accommodation may include operational costs which may be significant enough to constitute undue hardship.

Health and Safety Risks: Health and safety risks to the person requesting the accommodation, as well as to other employees and/ or the general public are to be taken into consideration.

The assessment of these factors should be undertaken having regard to the size of the organization and its operations, the nature of its business, and its financial capabilities. In no circumstances should discriminatory customer preferences or those of coworkers be considered valid factors when evaluating whether or not an accommodation measure will create undue hardship.

Undue hardship is a relative concept. Accommodation may cause undue hardship to one employer but not to another. It is also possible that a method of accommodation which does not cause undue hardship to an employer now may cause undue hardship in the future. This may happen as circumstances change; for example, the number of employees requesting accommodation may increase significantly. Therefore, it is important to take into consideration all the relevant factors when attempting to determine when the standard of undue hardship is met.

## 7. Specific Cases

Dress codes, work schedules or shift work sometimes impact adversely on individuals because of religious requirements. When this happens, the obligation to accommodate the individual, based on the needs of the *group*, is triggered under the *Code*.

#### 1. Dress Codes

Workplaces, services and facilities frequently have rules about dress. These may take the form of having to wear a particular uniform, having to wear protective gear, or a requirement that no person may wear a head covering. These rules may come into direct conflict with religious dress requirements. When they do, there is a duty to accommodate the person, short of undue hardship.

**Example:** A school requires its students to wear a particular uniform which prohibits any head covering. A Muslim girl wears a head covering as part of her religious observance. The school authorities have a duty to accommodate such a student and to permit her to wear the head covering.

**Example:** Certain creeds do not permit men to cut their hair. Workplaces that prefer to employ men with short hair are acting in a discriminatory manner, unless they fall under a legal exception under the *Code*. It should be noted that for health and safety reasons, an employer may ask employees to contain their hair with a net or other appropriate head covering.

**Example:** A school principal tells the parents of a Sikh child that wearing a turban or kirpan to school is not allowed. However, the "five K's" and related religious rules that include the wearing of a turban by Sikh men are part of the Sikh faith. In similar cases, Boards of Inquiry have rejected arguments by schools based on safety, on the grounds that wearing a ceremonial kirpan does not raise sufficiently compelling safety concerns. Schools must modify their policies to accommodate children seeking to modify the application of the rule for religious reasons.<sup>26</sup>

Considerations when dealing with dress codes:

- i) what is the exact nature of the religious observance?
- ii) what is the reason for the uniform or dress code?
- iii) what measures can be taken to accommodate the person? Are there alternatives?

- iv) are there health or safety factors involved?
- v) if so, do they involve the health or safety of the employee alone or are there consequences for other employees?
- vi) if so, has the employer shown that to accommodate the employee would create a health or safety hazard that would amount to undue hardship for the employer?

As a rule, uniforms such as school uniforms and work uniforms that have no health or safety rationale can be modified easily to permit the person concerned to wear the required item(s) of clothing. Clothing or gear with a health or safety rationale may constitute a reasonable occupational requirement. Nevertheless, the employer is obliged to accommodate the employee, for example, by seeing whether the gear can be modified to permit the person to wear the religious dress safely (subject to the undue hardship test), or by examining whether the employee can be transferred to another job that may be available in the company that does not require the clothing or gear.

#### 2. Break Policies

Some religions require that their members observe periods of prayer at particular times during a day. This practice may conflict with an employer's regular work hours or daily routines in the workplace. The employer has a duty to accommodate the employee's needs, short of undue hardship.

Possible forms of accommodation:

- a modified break policy;
- ii) flexible hours, and/or
- iii) providing a private area for devotions.

#### 3. Recruitment Procedures

A job applicant's religion cannot be used as a selection criterion for employment. There is an exception if the workplace qualifies as a "special interest" organization under the Code, that is, one that is a religious, educational, or other social institution or organization that is primarily engaged in serving the interests of persons who are identified by their creed (s. 24(1)(a) of the Code). Subject to this exception, attempting to obtain information concerning the applicant's creed at the pre-interview stage of a recruitment process is not acceptable.

Consequently, invitations to apply for employment and job application forms *cannot* contain:

- questions about availability for work that are asked in a manner that reveals the applicant's creed;
- ii) questions designed to reveal that religious requirements may conflict with the prospective's employer work schedules or workplace routines, or
- iii) inquiries as to religious affiliation, places of worship that are attended, or customs observed.

However, nothing prevents the employer from asking questions about creed at a personal employment interview, if the questions are otherwise permitted by the *Code*. A list of questions that can and cannot be asked during the employment application process can be found in the Commission's publication, *Employment Applications: Forms, Interviews*.

**Example:** It is permitted at an employment interview to ask religious membership for a teaching position in a denominational school if the job involves communicating religious values to students.

If a person has been offered employment, the person has the obligation to notify the employer of any religious requirements that are relevant to the performance of his or her duties, and to request accommodation.

## 4. Religious Leave

When an employee requests time off to observe a holy day, the employer has an obligation to accommodate the employee. The extent of the accommodation required is an issue that comes up frequently: does the person have to be paid? Until what point? What about unpaid leave?

Two Christian holidays (Christmas Day and Good Friday) are also statutory holidays in Ontario. This is sometimes held up as evidence of the "non-discriminatory" nature of these holidays. Some employers have argued that because these holidays are now statutory, the employer has no obligation to accommodate em-

ployees by paying for other religious holidays. The Supreme Court of Canada has stated that this approach is incorrect.

In Chambly<sup>27</sup>, the Court examined the issue of whether the "secularized" nature of Good Friday and Christmas can excuse a policy alleged to be discriminatory based on religion because it is based on the Christian calendar. The Court wrote:

Here the schedule of work is based upon the Catholic calendar of holidays. Nonetheless, I think the calendar should be taken to be secular in nature and thus neutral or non-discriminatory on its face. It will be remembered that the majority of the Court of Appeal determined that since the calendar did not have any religious aims, it was not discriminatory. With respect, I think this was an erroneous conclusion. It is true that this approach can properly serve to determine that there has been no direct discrimination. However, the analysis cannot stop there. Consideration must still be given to the effect of the calendar in order to determine if there is indirect or adverse effect discrimination. <sup>28</sup> [Emphasis in original.]

In other words, the secularized nature of traditional Christian holidays may remove the taint of direct discrimination but not of constructive discrimination.

Example: In *Chambly*, three Jewish teachers employed by a Catholic school board were denied access to the special purpose paid-leave provisions in the collective agreement so that they could observe Yom Kippur. They were told instead that they could take the day off, but unpaid. The Court held that the school board's leave policy had an adverse effect on Jewish teachers despite the secularized nature of Good Friday and Christmas. The analysis which led to the Court's finding of adverse effect is set out by Mr. Justice Cory.

... Christian holy days of Christmas and Good Friday are specifically provided for in the calendar. Yet, members of the Jewish religion must take a day off work in order to celebrate Yom Kippur. It thus inevitably follows that the effect of the calendar is different for Jewish teachers... [t[hey ... must take a day off work while the majority of their colleagues have their religious holy days recognized as holidays from work. In the absence of some accommodation by their employer the Jewish teachers must lose a day's pay to

observe their holy day. It follows that the effect of the calendar is to discriminate against members of an identifiable group because of their religious beliefs. The calendar or work schedule is thus discriminatory in its effect.<sup>29</sup>

The Court then examined the nature of the accommodation which would be required to alleviate the adverse effect. It rejected the view that the school board's offer of unpaid leave to the Jewish teachers was sufficient accommodation. Mr. Justice Cory wrote:

If a condition of work existed which denied all Asian teachers one day's pay, it would amount to direct discrimination... The loss of one day's pay resulting from direct discrimination would not be tolerated... and would fly in the face of human rights legislation. Similarly adverse effect discrimination resulting in the same loss cannot be tolerated unless the employer takes reasonable steps to accommodate the affected employees<sup>30</sup> [emphasis added.]

The Court concluded religious leave should have been available under the special purpose paid-leave provision in the collective agreement. This did not cause undue hardship to the school board.

A number of general principles emerge from this case that are not limited in their application to the particular terms of the collective agreement examined in *Chambly*.

- i) The employer has a duty to consider and grant requests for religious leave, including paid religious leave, unless to do so will cause undue hardship.
- ii) Equality of treatment requires at a minimum that employees receive paid religious days off, to the extent of the number of religious Christian days that are also statutory holidays, namely two days (Christmas and Good Friday).
- iii) The number of paid days may be three under some collective agreements which also make Easter Monday a holiday.
- iv) Beyond this point, *i.e.*, two or three days, individuals may still seek accommodation. For example, measures might include additional paid leave days such as floating days or compassionate leave days, if such exist under company policy or collective agreements, or through unpaid leave.
- v) The standard for *all* accommodation requests is undue hardship, which places a specific burden on the employer to

produce evidence to the standard of undueness of the hardship and of its effect.

#### 5. Flexible Scheduling

The purpose of this measure is to allow a flexible work schedule for employees, or to allow for substitution or rescheduling of day when an employee's religious beliefs do not permit him or her to work certain hours. For example, Seventh Day Adventists and members of the Jewish faith observe a Sabbath from sundown Friday to sundown Saturday. Observant members of these religions cannot work at these times.

Flexible scheduling may include: alternative arrival and departure times on the days when the person cannot work for the entire period, or use of lunch times in exchange for early departure or staggered work hours. Where the person has already used up paid holy days to which he or she is entitled, the employer should also consider permitting the employee to make up time lost or use floating days off.

#### 6. Rescheduling and the Employment Standards Act

In some workplaces, rescheduling is a practicable accommodation measure but it poses a financial difficulty because of the requirement of paying wages at a premium rate, typically at one and a half times the regular rate, to individuals who work on Good Friday and Christmas. In Ontario, the Employment Standards Act. R.S.O. 1990, E-14 provides that:

s. 26(1): ... where an employee works on a public holiday<sup>31</sup>, the employer shall pay to the employee for each hour worked a premium rate of not less than one and one-half times the employee's regular rate and, where the employee is entitled to the holiday with pay, his or her regular wages in addition thereto.

The requirement of premium pay for work done on public holidays may present a financial obstacle to accommodation in that it may constitute undue hardship. However, subsection 25(3) of the Employment Standards Act allows for another alternative, namely the substitution of public holidays:

s. 25(3)... where a public holiday falls upon a working day for an employee, an employer may with the agreement of the employee or the employee's agent substitute another working day for the public holiday which day shall not be later than the next annual vacation of the employee, and the day so substituted shall be deemed to be the public holiday.

If a person seeks accommodation and if s. 25(3) of the *Employment Standards Act* presents an alternative, rescheduling would constitute an acceptable form of accommodation.

Since the employer and the union have a joint legal obligation to accommodate employees as established in *Renaud*<sup>32</sup> and other cases, the employer and the union should be free to enter into agreements that are more generous than the minimum standards set by the *Employment Standards Act*, according to s. 4 of that *Act*:

s. 4... a right, benefit, term or condition of employment under a contract... that provides in favour of an employee a higher remuneration in money, a greater right or benefit or lesser hours of work than the requirement imposed by an employment standard shall prevail over an employment standard.

## Exceptions

Discrimination or unequal treatment may be legally defensible in certain circumstances.

## 1. Participating in Special Interest Organizations

First, s. 18 of the *Code* provides that religious, philanthropic, educational, fraternal or social institutions which are primarily engaged in serving the interests of persons who are identified by their creed, may give priority to persons of the same creed with regard to participation or membership.

## 2. Employment in Special Interest Organizations

Second, s. 24(1)(a) of the *Code* provides that religious, philanthropic, educational, fraternal or social institutions that are primarily engaged in serving the interests of persons identified by their creed may employ or give preference in employment to persons similarly identified, if the qualification is *reasonable and in good faith* in relation to the nature of the employment.

Example: An educational institution such as a denominational school may prefer to employ teachers of the same denomination or faith. This hiring policy would be permitted if the teacher's own faith is related to the professional functions that teachers are expected to perform in denominational schools. However, this same defence is not available to the school with respect to the hiring of maintenance staff. The school must show that the requirement of belonging to a particular faith has a rational connec tion to the essential duties of a job.

#### 3. Reasonable and Bona Fide Occupational Requirements. **Qualifications or Factors**

If a requirement, qualification or factor is neutral or nondiscriminatory on its face, it may nonetheless have an adverse impact effect and may be discriminatory under s. 11 of the Code. However, the Code provides a defence if the requirement, qualification or factor is reasonable and in good faith, and if the needs of the persons affected cannot be accommodated without undue hardshi to the person responsible for accommodating those needs.

Example: A policy that requires all employees to work on a day which coincides with the holy day of a particular creed may be defensible, despite its adverse impact on some employees, because the nature of the business is such that a certain day of the week is critical to the operations of the establishment. However, the employer has a duty to accommodate an employee, if this can be accomplished short of undue hardship to the employer. Administrative inconvenience does not constitute undue hardship.

- The requirement in question must be established in good faith with the intention of achieving its stated business objective, and not as a means to avoid the purpose of the Code.
- ii) The requirement must be objectively connected to its stated business purpose.
- iii) The requirement should be the least discriminatory alternative available, other things being equal.

#### CONCLUSION

Religious pluralism poses a challenge in any multicultural society, especially one as diverse as ours. Although the law is developing

rapidly in this area, an informed spirit of tolerance and compromise is indispensable to any civil society, as well as to its capacity to make opportunities available to everyone, on equal terms, regardless of creed.

#### **ENDNOTES**

- 1. Human rights laws in other Canadian jurisdictions use terms such as "religion" as prohibited grounds of discrimination. For a review of decisions dealing with "creed" and "religion," see Tarnopolsky, *Discrimination and the Law* (Toronto: Richard deboo, 1985) at 6-1 to 6-6.
- See Singh v. Workmen's Compensation Board Hospital & Rehabilitation Centre (1981), 2 C.H.R.R. D/549 (Ontario Board of Inquiry); Bhinder v. Canadian National Railway Co. (1981), 2 C.H.R.R. D/546 (Cdn. Human Rights Tribunal), reversed [1983] 2 F.C. 531, affirmed [1985] 2 S.C.R. 561.
- 3. Atheists deny the existence of God; agnostics are of the view that nothing is known or likely to be known about the existence of God.
- 4. But see *Obdeyn v. Walbar Machine Products of Canada Ltd.* (1982), 3 C.H.R.R. D/712 (Ont. Bd. of Inquiry) at D/716–D/717.
- 5. Not only are such groups not protected under the *Code*, but they may also be subject to provisions of the *Criminal Code*. Any reports of activities involving such groups should be immediately reported to the police.
- 6. For example, female genital mutilation is a violation of women's human rights and is not protected on the ground of creed. See the Commission's *Policy on Female Genital Mutilation*.
- 7. This is reflected in the Preamble of the Code which recognizes that the recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace . . . [and that has as its aim] the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and able to contribute fully to the development and well-being of the community and the Province.

- The notion of "accommodation" is dealt with in the section entitled "Duty to Accommodate"
- The principle was established in the Charter context in R. v. Big M Drug Mart Ltd., [1985] 1 S.C.R. 295 and in Ontario Human Rights Commission and O'Malley v. Simpsons-Sears Ltd. (1985), 7 C.H.R.R. D/3102 (S.C.C.) at par. 24775.
- 10. Dufour v. J. Roger Deschamps Comptable Agréé (1989), 10 C.H.R.R. D/6153 (Ont. Bd. of Inquiry) at 6170.
- 11. Ibid.
- 12. See the International Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981).
- 13. S. 24(1)(a) of the Code, for example, allows an institution which primarily serves the interests of an identifiable religious group to prefer job applicants who are also members of that group.
- 14. Ibid.
- 15. S. 23(4) of the Code.
- 16. See Opening and Closing Exercises for Public Schools in Ontario (Ministry of Education and Training, 1993). See also Zylberberg v. Sudbury Board of Education (Director) (1988), 65 O.R. (2d) 641 (Ont. C.A.).
- 17. S. 9 of the Code deals with indirect discrimination.
- 18. S. 11(2) of the Code.
- 19. Commission scolaire régionale de Chambly v. Bergevin (1994), 22 C.H.R.R. D/1 (S.C.C.).
- 20. S. 11 of the Code. Individuals may seek accommodation for religious practices or observances that do not conform to established dogma, or they may seek to observe a practice which is not shared by all members of the creed. Dress codes, dietary laws, etc. are good examples of religious practices that are sincerely observed but may not be followed by all practitioners of a creed.
- 21. Central Okanagan School District No. 23 v. Renaud (1992), 16 C.H.R.R. D/425, Supreme Court of Canada. The British Columbia Human Rights Act which was in force at the time did not mention the duty to accommodate explicitly. The

principle reached by the Supreme Court of Canada in *Renaud*, namely, that the union as well as the employer has a duty to accommodate short of undue hardship, applies a *fortiori* to the Ontario *Human Rights Code* which explicitly imposes a duty to accommodate, short of undue hardship.

- 22. Ibid. at D/438.
- 23. Supra, note 21 at D/436-D/437.
- 24. (1982), 89 D.L.R. (4th) 305 (Ont. Div. Ct.).
- 25. Ibid. at 312.
- Sehdev v. Bayview Glen Junior Schools Ltd. (1988), 9
   C.H.R.R. D/4881 (Ont. Bd. of Inquiry); Pandori v. Peel Board of Education (1990), 12 C.H.R.R. D/364, aff'd (1991), 14 C.H.R.R. D/403 (Ont. Div. Ct.), leave to Ont. C.A. refused.
- 27. Commission scolaire régionale de Chambly v. Bergevin (1994) 22 C.H.R.R. D/1 (S.C.C.).
- 28. *Ibid.* at D/11.
- 29. Ibid. at D/11-D/12.
- 30. Ibid at D/12.
- 31. "Public holiday" is defined in s. 1 of the ESA as including "New Year's Day, Christmas Day and the 26th day of December."
- 32. Supra, note 21.

Policy on Discrimination and Language

# POLICY ON DISCRIMINATION AND ANGUAGE

#### INTRODUCTION

The Ontario *Human Rights Code* (the "Code"), states that it is public policy in Ontario to recognize the inherent dignity and worth of every person and to provide for equal rights and opportunities without discrimination. The provisions of the Code are aimed at creating a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and feels able to contribute to the community.

This policy statement sets out the Ontario Human Rights Commission's (the "Commission") position on language-based discrimination in the areas of employment, accommodation, services, contracts, and membership in unions.

The *Code*, like most other provincial human rights legislation in Canada, does not include "language" as a prohibited ground of discrimination. For the Commission to have jurisdiction, the discriminatory action or behaviour must be in relation to a prohibited ground of discrimination in the *Code*.

Although the *Code* does not explicitly identify "language" as a prohibited ground of discrimination, the Commission does accept complaints under a number of related grounds, such as ancestry, ethnic origin, place of origin and in some circumstances, race.<sup>2</sup> In the Commission's experience, language can be an element of a complaint based on any of these grounds.<sup>3</sup>

# LANGUAGE-RELATED GROUNDS OF DISCRIMINATION: ANCESTRY, ETHNIC ORIGIN, PLACE OF ORIGIN, RACE

The first language we learn is frequently the language spoken by our parents or guardians and others who take care of us as children. There is almost inevitably a link between the language we speak or the accent with which we speak a particular language on the one hand, and our ancestry, ethnic origin or place of origin on the other.<sup>4</sup>

A person's accent is also often associated with her or his "mother tongue" or place of origin. Because a person's accent is usually related to her or his ancestry, ethnic origin or place of origin, the Code can be infringed when someone is denied employment. service, housing, or is otherwise discriminated against because of an accent. In these kinds of situations, the underlying discrimination is often actually based on ancestry, place of origin and, or ethnic origin.

Example: After an interview for a job as a school bus driver, a woman from Quebec, whose first language is French, was told she would not be hired for the position because she does not speak English fluently. She believed that she did have adequate command of English, but that she was turned down because her first language is French. Fluency in English was not identified as an essential feature of the job. Since one's "mother tongue" is closely associated with ancestry,5 to deny a person employment because she is French-speaking could constitute a violation of the Code on the ground of "ancestry." Also, as she is from Quebec, "place of origin" could be cited as a secondary ground in the complaint.6

Example: A teacher, originally from Poland, was on a school board's substitute teacher's list from which individuals are selected for short-term assignments. A period of time went by when he was not selected from this list for temporary assignments. The teacher learned that a note had been attached to his file which said that he did not speak English. The teacher filed a human rights complaint, and at a hearing before a board of inquiry, the respondent indicated that the note should have stated that the complainant spoke English with an "accent" and therefore should not be assigned to substitute for teachers in English or Social Studies classes. The board of inquiry ruled that the teacher was discriminated against because of his accent which is directly related to his ancestry or place of origin.7

There can also be situations in which the issue of fluency in a language or a person's accent in speaking a particular language, can be used to mask discrimination based on race.

Example: An African Canadian woman grew up in North Africa, speaking Italian. She had also studied in Italy. She applied for a position as a social worker with a community organization. The job description stated that, in addition to the technical skills and experience as a social worker that would be required for the job,

competence in speaking "Italian, Portuguese or Chinese would be an asset." Although she was the best qualified applicant, she was denied the position because the agency felt that its client group would not be able to relate to "how" she spoke Italian, that is, her accent. She felt that her race was the real reason she was not hired and subsequently filed a complaint with the Commission. Her complaint was investigated and referred to a board of inquiry.

## larassment and "Poisoned Environment"

#### 1. Harassment

Harassment is defined in Section (s.) 10(1) of the *Code* as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome." Harassment because of language or accent, may be a form of discrimination on the grounds of ancestry, ethnic origin, place of origin or in some situations race, contrary to the *Code*.

**Example:** A manager supervises a group of workers whose first language is Arabic. He gets angry when they speak among themselves in Arabic during their breaks. The manager orders these employees to speak "Canadian" while they are at work, and threatens to terminate their employment if they continue speaking Arabic. Unless the manager can demonstrate that speaking English at all times at the workplace is a reasonable and *bona fide* requirement in the circumstances, his behaviour could constitute harassment under s. 5 of the *Code*.

#### 2. "Poisoned Environment"

There are situations in which a single incident may be significant or substantial enough to constitute a breach of the *Code* by creating a "poisoned environment" for some individuals. Unequal treatment, in the form of offensive behaviour, does not have to occur continuously or repeatedly for there to be a violation of the *Code*.

Sections 1, 2, 3, 5, 6 and 9 of the *Code*, provide protection from discrimination because of race, ancestry, place of origin or ethnic origin. Any one of these sections can be the basis for a claim that a single incident was substantial enough to create a "poisoned environment."

In determining whether a "poisoned environment" has been created for persons identified by a prohibited ground of discrimination, the Commission looks at the impact of the behaviour rather than the number of times the behaviour occurs. A "poisoned environment" can arise when a person or a group of people are treated differently for reasons related to the language they speak. Language is often a pretext for indirectly discriminating against someone because of her or his ancestry, place of origin or ethnic origin.9

Example: A law professor tells his class that those who speak English with a "foreign" accent do not make "good lawyers," and should not be admitted to law schools in Ontario to occupy spaces that should be held by Canadians. This remark in itself may be sufficient to poison the environment for those students in the class whose first language is not English, or those whose first language may be English but come from a country other than Canada and speak English with an accent. It may also have an impact on students whose ancestors came from, for example, Asia or Africa. because the comment targets new Canadians, many of whom now immigrate from these regions of the world.

## Constructive Discrimination

Under s. 11 of the Code, constructive discrimination may occur where there is a requirement, qualification or factor that is not discriminatory on its face, but when applied, results in the exclusion, restriction or preference of a group of persons identified by a prohibited ground of discrimination in the Code. 10

Section 11(1)(a) further provides that a requirement, qualification or factor will not be found to be discriminatory if it can be established that it is reasonable and bona fide in the circumstances. In order to do so, the requirement must be reasonable and bona fide in the circumstances unless it can be shown that the needs of the group adversely affected "cannot be accommodated without undue hardship on the person responsible for accommodating those needs ...." Factors that would determine whether a required accommodation poses an undue hardship include the cost of the accommodation, outside sources of funding, if any, and health and safety requirements, if any.

If an employer refuses to hire or promote an employee, if a sales clerk chooses to serve only particular customers, or a building

manager is consistently rude to certain tenants because of a characteristic that is closely related to grounds under the *Code*, these actions may give rise to a complaint. Language is a characteristic that is often closely associated with ancestry, ethnic origin or place of origin. Thus, the *Code* may be breached where a language requirement, such as "proficiency" in English, 11 excludes, gives preference to, or restricts persons because of their ancestry, ethnic origin or place of origin.

## 1. Bona Fide Occupational Requirement

The Commission recognizes that proficiency in a certain language may be a reasonable and legitimate requirement for employment. For example, if English-language proficiency is required for a position, it should be established as a *bona fide* occupational requirement. The test for determining if a qualification is *bona fide* must be an objective one. The requirement for English proficiency, and the degree of proficiency required, <sup>12</sup> must bear an objective relationship to the essential requirements of the job, and be a *bona fide* occupational requirement that is imposed in good faith. <sup>13</sup>

Example: A supervisor in British Columbia refused to hire a South Asian man for an entry level position in a lumber mill. According to the supervisor, the applicant "could not speak English." A board of inquiry found that the requirement of proficiency in English was not a *bona fide* occupational requirement for the position, and that the complainant's level of English was good enough to allow him to complete a course on lumber grading in English and obtain high marks. The board of inquiry went on to find that the supervisor's refusal to hire the complainant was in fact motivated by race and place of origin, not lack of proficiency in English, and therefore constituted an infringement of his rights under the (British Columbia) *Human Rights Act*. <sup>14</sup>

Fluency in a particular language could be a *bona fide* requirement in some employment or service situations.

**Example:** An agency that serves persons from Central America requires support workers who can also act as refugee advocates. The functions of the position include providing support to clients at refugee board hearings. Fluency in Spanish in addition to English (or French) would likely be considered a *bona fide* requirement for the position.

In these circumstances, the requirement for the position must focus on the particular language needed to function in the job, and not on the place of origin, ancestry, ethnic origin or race of candidates for the position. In the above example, if an applicant is qualified and speaks fluently in Spanish and English, but does not come from a Central America country, she could not be denied the position unless the agency could justify a defence under s. 24(1)(a) of the Code.

## Relevant Ontario Human Rights Code Provisions

## Services, Goods and Facilities—Section 1

Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or handicap.

#### Accommodation-Section 2

(1) Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status, handicap or the receipt of public assistance.

#### Harassment in Accommodation—Section 2

(2) Every person who occupies accommodation has a right to freedom from harassment by the landlord or agent of the landlord or by an occupant of the same building because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, marital status, family status, handicap or the receipt of public assistance

#### Contracts—Section 3

Every person having legal capacity has a right to contract on equal terms without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or handicap.

## **Employment—Section 5**

(1) Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status or handicap.

## Harassment in Employment—Section 5

(2) Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, record of offences, marital status, family status or handicap.

### Vocational Associations—Section 6

Every person has a right to equal treatment with respect to membership in any trade union, trade or occupational association or self-governing profession without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or handicap.

## Reprisals—Section 8

Every person has a right to claim and enforce his or her rights under this Act, to institute and participate in proceedings under this Act and to refuse to infringe a right of another person under this Act, without reprisal or threat of reprisal for so doing.

## **Infringement Prohibited—Section 9**

No person shall infringe or do, directly or indirectly, anything that infringes a right under this Part.

#### Constructive discrimination—Section 11

(1) A right of a person under Part I is infringed where a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that results in the exclusion, restriction or

preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,

(a) the requirement, qualification or factor is reasonable and bona fide in the circumstances;

## Special employment—Section 24

- (1) The right under s. 5 to equal treatment with respect to employment is not infringed where,
- (a) a religious, philanthropic, educational, fraternal or social institution or organization that is primarily engaged in serving the interests of persons identified by their race, ancestry, place of origin, colour, ethnic origin, creed, sex, age, marital status or handicap employs only, or gives preference in employment to, persons similarly identified if the qualification is a reasonable and bona fide qualification because of the nature of the employment.

#### **ENDNOTES**

- At present, Quebec and the Yukon Territory are the only Canadian jurisdictions which specifically state that language is a prohibited ground of discrimination in the area of employment.
- 2. Sign language is not included in this policy as it is directly related to the ground of "handicap" which is protected under the Code. Issues relating to persons who sign are addressed in the Commission's Guidelines for Assessing Accommodation Requirements for Persons with Disabilities.
- 3. In accordance with s. 10 of the *Interpretation Act* R.S.O. 1990, c.I.11, the *Code* is to be given a fair, large and liberal interpretation. See also Cousens v. Canadian Nurses Association (1981), 2 C.H.R.R. D/365 (Ont. Bd. of Inq.).
- 4. Espinoza v. Coldmatic Refrigeration of Canada Inc. et al., March 31, 1995), unreported, Harman, R. (Ont. Bd. of Inq.).
- 5. "Mother tongue": see further *Supra*, *note 3*, *Cousens*. It should also be noted that there maybe a violation of the *Code*, based on "place of origin," when English as a "mother tongue" is a job requirement.
- 6. Discrimination against a regional accent may also constitute an infringement of the *Code* on the basis of "place of origin." "Place of origin" may cover situations where the characteristics of a person are, to the respondent, strongly associated with a particular region, that trigger discrimination. For example, an Aboriginal man from Northern Ontario and a woman from Newfoundland may both speak with an accent typical of the regions where they live. If they are denied employment because of their accent, they may file a complaint with the Commission on the basis of "place of origin." (see further Judith Keene, *Human Rights in Ontario* (2d) (Toronto: Carswell, 1992) at 53.
- 7. Gajecki v. Surrey School District (No. 36)(1989) 11 C.H.R.R. D/326 (B.C. Council of H.R.). See also Segula v. Ferrante, Ball Packaging Products Inc. (March 3, 1995), (unreported), Leighton, D. (Ont. Bd. of Inq.).
- 8. The subjective element of this definition assumes that the person responsible for the behaviour knows that his/her

- comments or actions are unwelcome. the objective element is based on the assumption that the person should reasonably know that his/her behaviour is unwelcome.
- The Supreme Court of Canada upheld the concept of "poisoned environment" in Attis v. The Board of School Trustees. District No. 15 and The Human Rights Commission of New Brunswick et al. (April 3, 1996), (S.C.C.) [unreported].
- 10. R. v. Bushnell Communications Ltd. et al. (1974) 1 O.R. (2d) 442; aff'd (1974) O.R. (2d) 288.
- 11. Studies have shown that there is a significant relationship between English-language proficiency and discriminatory experiences, and that these experiences are not limited to employment (see further Racism and Chinese-Canadian Business Participation, prepared for the Chinese Information and Community Services, Toronto, March 1996). That is, persons with low levels of language skills are more likely to experience discrimination in employment, services in housing accommodation.
- 12. The degree of proficiency required must be objectively determined. There may also be situations where a certain level of language requirement is justifiable for a particular position.

Example: A store clerk should have sufficient language skills to be able to communicate with customers. Other occupations may require only a basic understanding of English and if there is no contact with the public limited communication skills may be adequate for the position. In these situations, requiring a high level of English-language proficiency would not be a bona fide occupational requirement.

On the other hand, a politician may need to hire an executive who is fluent in several Chinese dialects in order to serve her large Chinese-speaking constituency. In which case, fluency in particular Chinese dialects may be a bona fide occupational requirement.

- 13. Ontario (Human Rights Commission) v. Etobicoke (Borough) [1982] 1 S.C.R. 202.
- 14. Dhaliwal v. B.C. Timber Ltd. (1983), 4 C.H.R.R. D/1520 (B.C. Bd. of Inq.).

# Policy on Discrimination Because of Pregnancy

#### 1. INTRODUCTION

The Ontario Human Rights Code (the "Code") states that it is public policy in Ontario to recognize the inherent dignity and worth of every person and to provide for equal rights and opportunities without discrimination. The provisions of the Code are aimed at creating a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and feels able to contribute to the community.

The Code prohibits discrimintion because of sex. Section 10 (2) of the Code establishes that the right to equal treatment without discrimination because of sex includes the right to equal treatment without discrimination because a woman is, or may become pregnant.

In addition, section 11 of the *Code* provides that it is also discriminatory if a workplace rule or requirement results in an adverse impact on persons who are identified by a prohibited ground of discrimination, except where the requirement, qualification or factor is reasonable and bona fide in the circumstances. In other words, rules and requirements that are neutral on their face may have a discriminatory impact.

Most of the complaints filed with the Ontario Human Rights Commission (the "Commission") by women alleging discrimination because of pregnancy are related to the workplace. Nevertheless, the right to equal treatment without discrimination because of sex or pregnancy extends to accommodation (housing etc.), services, goods and facilities, contracts and membership in trade unions

This policy has several purposes:

- to help the public understand how the *Code* protects women against discrimination because of pregnancy;
- to make women aware of their right to equal treatment in employment, accommodation, services, goods and facilities, contracts and membership in trade unions, without discrimination because they are, or may become pregnant, and
- to assist employers and providers of services and accommodation, to understand that they also have responsibilities under the Code to accommodate the needs of women who are, or may become, pregnant.

#### 2. BACKGROUND

Anti-discrimination legislation seeks to address and remove unfair disadvantages that result from the fact that a person belongs to a group identified under the *Code*. Child-bearing benefits society as a whole and therefore women should not be disadvantaged as a result of being pregnant. The Supreme Court of Canada has recognized that the financial and social burdens and the cost associated with having children should not rest entirely on women.<sup>2</sup>

Unfortunately, discrimination against women because of pregnancy continues to be a common practice in society, particularly in employment. Many women who are, or may become, pregnant do not know how their employers will respond to the employee's pregnancy. This often results in the women experiencing considerable stress and even fear that they may lose their job.

Women who are pregnant may experience varying forms and degrees of discrimination, depending on what other characteristics form part of their personal identity or status in society. For example, pregnant women who receive social assistance, or who are young, single, involved in a same-sex relationship, or who have a disability, are often more vulnerable and therefore more likely to be subject to discriminatory behaviour than pregnant women who are in a traditional family structure.

#### 3. MEANING OF "PREGNANCY"

"Pregnancy" means the process of pregnancy from conception up to the period following childbirth, and including the post-delivery period. The Supreme Court of Canada decided in 1991, that for the purposes of human rights legislation, the legislative protection of human rights legislation does not end on the day of delivery but continues, depending on the circumstances of the mother, to several weeks after delivery. The term "pregnancy" takes into account all the special needs and circumstances of a pregnant woman and recognizes that the experiences of women will differ.

Special needs can be related to circumstances arising from:

- miscarriage
- · abortion
- · complications because of pregnancy or childbirth

- conditions which result directly or indirectly from an abortion / miscarriage
- · recovery from childbirth (for a minimum of six weeks following delivery) 4

## 4. DISCRIMINATION "BECAUSE OF PREGNANCY" IS DISCRIMINATION BASED ON SEX

Only a woman can become pregnant, so pregnancy is a characteristic that is necessarily linked to a person's sex. Section 10 (2) of the Code states that:

The right to equal treatment without discrimination because of sex includes the right to equal treatment without discrimination because a woman is or may become pregnant.

## 5. OTHER RELEVANT GROUNDS OF DISCRIMINATION UNDER THE CODE

## Family status

In addition to sex, discrimination can occur because of one's family status. "Family status" is defined in section 10 (1) of the Code and refers to:

...the status of being in a parent and child relationship.

There are numerous stereotypes about a mother with a young child, particularly about her ability to continue working. For example, some believe that a mother who has an infant at home may miss work more often than employees who do not have a young family. Others may feel that hiring or keeping an employee who may become pregnant or who is on maternity leave costs the company too much.

However, boards of inquiry have rejected the argument that the cost of upgrading or retraining a woman after she returns from maternity leave is a defence to discriminating against a woman because of her family status.

## 6. RELEVANT SECTIONS OF THE CODE

The *Code* protects women against discrimination in the workplace (section 5); in services (section 1); in accommodation (e.g. housing) (section 2); contracts (section 3); and membership in trade unions (section 6). The Code also specifically prohibits harassment because of sex in accommodation (section 7(1)) and employment (section 7(2)).

Section 11 of the *Code* provides protection from constructive discrimination for women who are, or may become pregnant, when there is a rule, requirement or factor which may not be discriminatory on the surface, but when applied may have an adverse impact on women who are pregnant.

## 7. EMPLOYMENT (section 5)

## a. Hiring, Promotions, Transfers, Termination

Subject to *bona fide* requirements, denying or restricting employment opportunities in hiring, or transferring *etc.*, a woman because she is, or may become pregnant, is a violation of the *Code*. Certain work-related practices or behaviours may also constitute discrimination such as:

- limiting or withholding employment opportunities, or withholding training, regardless of work performance or years of service;
- not assigning a pregnant woman to a major project or team projects;
- a manager being overly critical of her work;
- docking a pregnant woman's time for using the washroom more frequently;
- making a pregnant woman the subject of inappropriate comments or jokes;
- terminating her with or without notice;
- · unwanted transfers
- denying sick leave benefits

(see "Endnotes" for detailed examples):5

Even if pregnancy or being of child-bearing age is only one of the factors in a decision to deny a woman employment-related opportunities, this could nevertheless constitute a violation of a woman's right to freedom from discrimination under the *Code* <sup>6</sup>. A woman loses more than just a job or a promotion when she is discriminated against because of pregnancy. She experiences a "missed opportunity" which has far greater consequences for her employment prospects.

If an employee is terminated for any reason related to pregnancy, the employer may be found to have violated her rights under the Code and the Employment Standards Act, R.S.O. 1990, E-14.

## Bona Fide Occupational Requirement

In some circumstances, differential treatment of a woman because she is, or may become, pregnant may be legitimate if it can be demonstrated that not being pregnant is a bona fide occupational requirement.

Example: A women who was seven months pregnant was denied a position as kitchen help in a restaurant. The board of inquiry heard evidence that the position would be physically demanding. As the woman had never performed these kitchen duties she would not know the extent of the duties and physical requirements expected for this job. The Board of Inquiry was satisfied in this particular instance that it was likely that not being in the later stages of pregnancy was a reasonable occupational requirement.<sup>7</sup>

To be considered a bona fide occupational requirement under human rights legislation, the requirement, qualification or factor must be imposed in good faith and be reasonable from an objective viewpoint.8 Case law and boards of inquiry apply a very high standard before accepting the defence of a bona fide occupational requirement. In other words, certain restrictions may have a rational or reasonable connection to the occupation and are therefore acceptable defences. Without such a connection to the occupation the employer will not have a defence of a bona fide occupational requirement.

**Example:** A board of inquiry found that an employer had discriminated against a female employee when it refused to employ her in a section of the company that processed certain gases. The employer defended its action on the basis that, from time to time, there are accidental emissions of a of gas which may be harmful to women of child-bearing age or to a fetus. The board of inquiry found that the risk of harm to a fetus from the accidental emission of the gas was minimal. As well, the scientific research did not support the company's concerns. The board of inquiry noted that any woman who knows she is pregnant or who intends to become pregnant, could be transferred from this section until after she has given birth.9

## b. Duty to Accommodate

In order for a requirement to be a reasonable and *bona fide* in the circumstances, it must be shown that the needs of the particular group protected under the *Code* cannot be accommodated "short of undue hardship." "Short of undue hardship" is a standard that applies to the person required to make the accommodation, and takes into consideration costs, as well as health and safety factors.

The Supreme Court of Canada in *Brooks* v. *Canada Safeway* established that discrimination against women who are, or may become pregnant, includes not only discriminatory action, but also the failure to accommodate the special needs of persons who fall into this category.

Special needs during the pre-natal and post-natal period can be accommodated, short of undue hardship, in a variety of ways, including:

- temporary relocation to another work station or location or reassignment of duties;
- providing a flexible work schedule to accommodate medical appointments, including treatment for infertility;
- · allowing for breaks as necessary;
- providing a supportive environment for a woman who is breast-feeding. Accommodation may mean allowing the care-giver to bring the baby into the workplace and providing a feeding area that assures a degree of privacy. A supportive environment can be created with minimum disruption.

When the application of a rule has an adverse impact on women who are, or may become pregnant, the rule may violate their rights under the *Code*. Consideration should be given to introducing an appropriate accommodation measure, short of undue hardship.

**Example**: A police officer requested light duties for the last stages of her pregnancy. The Police Force had a policy that did not provide a modified work program and her request for light duties was denied. Instead, she was told that she could take a part-time civilian position at a much lower salary. This meant that the officer would have to resign from the force. The Board of Inquiry stated the rule of "no modified duties" was applied to all officers but it clearly excluded "pregnant women from consideration of the fact they are at higher risk during the latter stages of their

pregnancy." It found that the accommodation offered was unreasonable because other male officers who were injured were given lighter duties. The Board of Inquiry concluded that the Police Force discriminated against the police officer because of her sex.<sup>10</sup>

In this example, the policy was applied equally to all police officers and, on its face, did not discriminate. However, because the rule adversely affected those who became pregnant, it constituted "constructive discrimination" in relation to pregnant women. The uniform application of the policy of not providing modified duties resulted in pregnant police officers being negatively affected.

It is important to note that an employer cannot arbitrarily decide that a pregnant employee should take a leave of absence as an accommodation measure, without considering other options for dealing with a situation requiring accommodation, in consultation with the affected employee.

## Employee's and Employer's Responsibility

Both the employee and the employer share the responsibility for determining the most appropriate form of accommodation that a given set of circumstances may require.

If a pregnant employee is advised by her doctor that she can no longer work in a particular job, she is responsible for clearly informing the employer of her need for accommodation and of the accommodation required.

Once the employer is aware of what accommodation is required, the employer has a duty to take the necessary steps to accommodate the special needs and circumstances of the pregnant employee, short of undue hardship.11

The employer cannot insist that the employee take an unpaid leave of absence as an accommodation measure. Accommodation should be provided in a way which most nominally affects the employee's rights.

Under the Code, employers must demonstrate that a particular form of accommodation would lead to excessive costs or health and safety concerns, in order to justify a claim of undue hardship.

#### c. Benefit Plans

Employee benefit plans or employment practices should not disadvantage women on the basis of sex or pregnancy.

Employment benefits are a form of income replacement, not an insurance scheme. Therefore, employee benefit plans or employment practices that result in disadvantage because of pregnancy constitute discrimination under the *Code* on the basis of sex and pregnancy.<sup>12</sup>

A recent Ontario board of inquiry decision, *Crook v. Ontario Cancer Treatment and Research Foundation*, decided that sick leave benefits should be available to a woman who has recently given birth, for health-related reasons, whether or not she is on maternity leave under the *Employment Standards Act.* <sup>13</sup>

#### d. Health-Related Absences14

In the *Brooks* decision, the Supreme Court of Canada said that pregnancy leave should be included in employee benefit plans without having to be categorized as an illness, accident or a disability. Under the *Brooks* doctrine, if a pregnant employee produces proof that she must be absent from work for health-related reasons, at whatever stage this might be during the pregnancy, she cannot be treated differently or adversely from other employees who are also absent from work for other "health-related reasons."

"Health" was broadly defined in the Brooks decision to include:

- the physical and psychological health of the woman;
- the health, well-being, growth and development of the fetus; and
- a woman's ability to function as a social being, interacting with her family, employer and significant others.

A "health-related absence from work" can therefore mean any absence that is related to a woman's health, or the health and well-being of the fetus.

The Alberta court in the *Parcels* decision endorsed the *Brooks* principle that a health-related reason for absence from the work-place by a pregnant employee is not to be treated differently from other health-related absences. This applies generally where the

woman is pregnant and where the condition which requires time off is associated with pregnancy.

The court in Parcels concluded that:

- Where an employer has a benefit plan that compensates healthrelated absences or provides disability benefits to its employees, a woman should be entitled to disability benefits during that portion of the pregnancy or parental leave that she is unable to work for health reasons related to the pregnancy and childbirth. Payment must begin as soon as the pregnant woman is away from the workplace for a health-related reason.
- Any health-related portion of maternity leave is to be treated the same as other health-related leaves such as a sick leave or disability leave. The employee should be compensated at substantially the same level and should be subject to the same conditions as an employee who becomes ill, such as the requirement to provide a medical confirmation for the absence. 15
- Pregnant employees are to be compensated for the full period of their health-related absence whether it occurs during the prenatal to post-natal period, including recovery from childbirth.

Pregnancy leave is used for bonding and nurturing. As well, different women have different medical and physiological needs following childbirth depending on their circumstances, and that the time required to recover from childbirth varies. Because different people respond differently to pregnancy, requests for health-related absences are usually assessed and granted on an individual basis. Pregnant employees who require leave for health-related pregnancy concerns are to follow the proof-ofclaim procedures of the employer's benefit plan to establish that the health-related absence is valid.

## e. Special Programs: section 14

Section 14 of the *Code* which deals with "special programs," allows for differential treatment of persons protected under the Code if that program is designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve equality of opportunity. The purpose of maternity leave (both health-related and voluntary portions) is to address the circumstances related to pregnancy. Women have experienced, and continue to experience, considerable disadvantage in employment, housing, *etc.* because of pregnancy. As previously noted, the Supreme Court of Canada has acknowledged that the cost associated with bearing children rests disproportionately on women.

Section 14 recognizes that:

- "special programs" which are designed to relieve hardship or economic disadvantage or to achieve equality are necessary and legitimate;
- the equality rights provisions of the *Code* are not infringed by the implementation of a special program.

For further information on the application of section 14 please refer to the Commission's *Guidelines on Special Programs*.

#### f. Harassment/Poisoned Environment

Actual intention to harass is not required to establish evidence of a poisoned environment. If the comment or conduct is known or ought reasonably to be known to be unwelcome, it may be considered as "harassment." The phrase "ought to have known" introduces an objective element to the test. <sup>16</sup> Ongoing jokes and comments or derogatory statements made about pregnant women in a workplace or service setting, may create a "poisoned environment" for women by making them feel harassed, threatened or unwelcome.

## 8. ACCOMMODATION (e.g. housing) (section 2)

Section 2 of the *Code* protects a woman who is, or may become pregnant, against discrimination in housing.

**Example**: A young woman shared a two bedroom apartment with various roommates. The owners were aware of the arrangement, and she received their approval for each new co-tenant. She was later involved with one of these co-tenants and became pregnant. When the superintendent found out she was pregnant, he asked her if she was "intending to give up the baby for adoption" and said that the owners "didn't want kids in the building." The Board of Inquiry found that the complainant had been discriminated against because of her sex and family status. In the Board's view, one of the main reasons she was evicted "was her pending motherhood." 17

A Board of Inquiry had also decided that "Adult Only" rules in condominiums discriminate on the grounds of "family status." 18

## 9. SERVICES, GOODS AND FACILITIES (section 1)

The Code prohibits discrimination in "services, goods and facilities" against women who are pregnant. This means that women who are pregnant, or who are accompanied by their newborn babies to a restaurant or a theatre, cannot be denied service or access unless there is a bona fide reason for doing so.

The Code, however, allows for an exception under section 22. This section permits individual and group insurance policies, which are offered as a service, to make distinctions based on sex if the distinctions are made on reasonable and bona fide grounds. In Bates v. Zurich. 19 the Supreme Court of Canada stated that a discriminatory practice in the insurance industry is "reasonable" if:

- a) it is based on a sound and accepted insurance practice; and
- b) there is no practical alternative.

Example: A professional association offers as a service to its members an optional insurance policy. The policy has a specific provision requiring a 30-day pre-existing condition restriction that applies only to women who are pregnant. This means that a woman who is pregnant at the time she applies for the policy is not eligible for coverage. If a pregnant woman challenges this requirement, the insurance provider, and possibly the professional association, would have to show that this requirement meets the test of a sound and accepted insurance practice and that there is no practical alternative, according to Bates v. Zurich.

## 10. COLLECTIVE AGREEMENTS AND COMPANY POLICIES

Employers and labour representatives are recognizing their obligations under the *Code*, as well as their shared responsibility to maintain workplace environments that are free from discrimination.

A woman who is pregnant may have rights that can be pursued by a grievance under a collective agreement. Provincial labour laws allow arbitrators to apply and interpret the Code to grievances

which involve human rights violations.<sup>20</sup> Some issues that may be more appropriately dealt with through the grievance process include:

- whether a pregnant woman can use sick leave and annual vacation leave for maternity leave.<sup>21</sup>
- whether sick-leave days and vacation leave can be accumulated while a woman is on maternity leave.<sup>22</sup>
- seniority issues relating to maternity leave.<sup>23</sup>

Persons are not obligated to exhaust an internal complaint resolution mechanism before considering other avenues of complaint such as approaching the Commission or filing a grievance. An individual may elect to file two complaints at the same time—one under the employer's internal policy and one with the Commission. However, if there is a grievance procedure in place under a collective agreement, the Commission may elect to exercise its discretion under section 34 of the *Code*, and decide to not deal with a complaint. This is because section 48(11)(j) of the *Labour Relations Act* allows labour arbitrators to interpret and apply human rights legislation.

Internal anti-harassment and anti-discrimination policies are not governed by provincial legislation and the Commission does not consider them in the same way as the grievance procedure under a collective agreement. This means that if the complainant is not satisfied with the resolution, s/he can contact the Commission. If this is the case, the complaint **should** be filed within the sixmonth limitation period which begins from the time of the alleged harassment. If a complaint is not filed within the time frame, the Commission may decide not to deal with the complaint, subject to section 34 (1)(d) of the *Code*.

#### 11. EMPLOYMENT STANDARDS ACT

The *Code* protects women's right to equal treatment in employment without discrimination because they are or intend to become pregnant. The *Employment Standards Act* (the "*ESA*") has a focus which is different from the *Code*. It identifies the employee's and employer's responsibilities concerning maternity leave and job security. Sections 34 to 44 of the *ESA* provide for the following (*detailed information on the ESA*, *please contact the Employment Standards Branch of the Ministry of Labour*):

- · identification of the employee's and employer's responsibilities concerning maternity leave and job security;
- establishment of the requirements for qualifying for maternity and parental leave, and ensuring that women have a job to return to: and
- setting out the employer's responsibility to maintain certain benefits on the woman's behalf while she is absent on leave.

## Related Provisions Under the Employment Standards Act

Employees are eligible to qualify for maternity/parental leave after 13 weeks of continuous permanent or contract employment. (s.35)

The employee is responsible for notifying the employer of the amount of time required for leave. (s. 35 (3))

Pregnancy leave: standard 17 weeks, unless otherwise agreed to; entitled to at least 6 weeks' leave after delivery, still-birth or miscarriage. (s. 37)

Parental leave: 18 weeks. (s. 40)

The employer **must** reinstate the employee to the same or comparable position, with the same wage, following absence because of pregnancy leave. (s. 43 (1))

Seniority rights will continue to accrue during leave (Note: issues concerning reinstatement are to be directed to the Employment Standards Branch of the Ministry of Labour). (s. 42(4))

The employer is required to maintain pension plan contributions, health insurance premiums and other benefit plan contributions, unless the employee elects in writing not to pay her/his share of the contribution. (s. 42(2)(3))

The employer cannot discipline or penalize an employee who takes, intends to take, or is eligible to take pregnancy or parental leave. (s. 44)

### RELEVANT CODE PROVISIONS

#### Section 1

Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or handicap. R.S.O. 1990, c. H.19, s. 1.

#### Section 2

- (1) Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status, handicap or the receipt of public assistance.
- (2) Every person who occupies accommodation has a right to freedom from harassment by the landlord or agent of the landlord or by an occupant of the same building because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, marital status, family status, handicap or the receipt of public assistance. R.S.O. 1990, c. H.19, s. 2.

#### Section 3

Every person having legal capacity has a right to contract on equal terms without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or handicap. R.S.O. 1990, c. H.19, s. 3.

#### Section 5

- (1) Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offenses, marital status, family status or handicap.
- (2) Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, record of offenses, marital status, family status or handicap. R.S.O. 1990, c. H.19, s. 5.

#### Section 6

Every person has a right to equal treatment with respect to membership in any trade union, trade or occupational association or self-governing profession without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or handicap. R.S.O. 1990, c. H.19, s. 6.

#### Section 7

- (1) Every person who occupies accommodation has a right to freedom from harassment because of sex by the landlord or agent of the landlord or by an occupant of the same building.
- (2) Every person who is an employee has a right to freedom from harassment in the workplace because of sex by his or her employer or agent of the employer or by another employee.

#### Section 8

Every person has a right to claim and enforce his or her rights under this Act, to institute and participate in proceedings under this Act and to refuse to infringe a right of another person under this Act, without reprisal or threat of reprisal for so doing. R.S.O. 1990, c. H.19, s. 8.

#### Section 10

(2) The right to equal treatment without discrimination because of sex includes the right to equal treatment without discrimination because a woman is or may become pregnant. R.S.O. 1990, c. H.19, s. 10 (2).

## Section 11

- (1) A right of a person under Part I is infringed where a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,
- (a) the requirement, qualification or factor is reasonable and bona fide in the circumstances; or
- (2) The Commission, the board of inquiry or a court shall not find that a requirement, qualification or factor is reasonable and bona fide in the circumstances unless it is satisfied that the needs of the group of which the person is a member cannot be

accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any. R.S.O. 1990, c. H.19, s.11 (2); 1994, c. 27, s. 65 (1).

#### Section 22

The right under sections 1 and 3 to equal treatment with respect to services and to contract on equal terms, without discrimination because of age, sex, marital status, family status or handicap, is not infringed where a contract or automobile, life, accident or sickness or disability insurance or a contract of group insurance between an insurer and an association or person other than an employer, or a life annuity, differentiates or makes a distinction, exclusion or preference on reasonable and *bona fide* grounds because of age, sex, marital status, family status or handicap.

#### **ENDNOTES**

- 1. Brooks v. Canada Safeway Ltd. [1989], 10 C.H.R.R. D/6183 (S.C.C.).
- 2. *Ibid.* It should also be noted that Canada is a signatory to the United Nations' *International Covenant on Economic, Social and Cultural Rights.* Article 10 (2) of the *Covenant* states that:
  - Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.
- 3. Alberta Hospital Association v. Parcels (1992), 17 C.H.R.R. D/167 (Alta. Q.B.); Parcels v. Red Deer General & Auxiliary Hospital Nursing Home (Dist. No. 15) (1991), 15 C.H.R.R. D/257 (Alta. Bd. of Inq.).
- 4. "Pregnancy" is understood to extend beyond the date of delivery and post-delivery recovery, which is included in the definition of "pregnancy," and is not necessarily restricted to six weeks after childbirth. See further *Parcels*, *ibid*.
- 5. The following are examples of situations where boards of inquiry have found that a woman's right to be free from

discrimination because she is or may become pregnant has been violated:

## Examples

Hiring: A pregnant woman was offered a position as a clerk, but when the employer learned that she was pregnant, the offer was withdrawn. A board of inquiry found that she was denied employment because she was pregnant and this constituted discrimination. It also found that the woman was entitled to compensation for lost unemployment insurance benefits for which she would have qualified had she not been denied the opportunity to work. If the employer had hired her as agreed, she would have received wages. "But for the discrimination," her employer would have made the appropriate deductions and therefore she would have been entitled to unemployment insurance benefits. McAlpine v. Canada (Canadian Forces) (1988), 9 C.H.R.R. D/5190 (CHRT). See also Jenner v. Point West Development Corp. (1990), 21 C.H.R.R. D/336 (Ont. Bd. of Inq.). In the Jenner decision, the board of inquiry found that the question of the complainant being available to work was so clearly linked with pregnancy and being a woman that the employer's decision not to hire her because she would not be available for the whole season amounts to deciding not to hire because she was pregnant.

**Promotion**: The B.C. Human Rights Council (B.C.H.R.C.) found that the employer discriminated against a pregnant employee when the employer failed to consider her for a promotion. Instead, she was demoted immediately before she was scheduled to go on maternity leave. The board of inquiry reviewed evidence that the employee was not provided with a written evaluation of her performance and that less than a standard period of time was allowed for the employee to meet performance objectives. It concluded that these also constituted discrimination on the basis of pregnancy. See further Magee v. Warner Lambert Canada (1990), 12 C.H.R.R. D/ 208 (B.C.H.R.C.).

Termination: The B.C. Human Rights Council found that a complainant was discriminated against when she was dismissed from her job as a cocktail waitress because she was pregnant. The employer had argued that it was not appropriate for a cocktail waitress to be pregnant. The board of inquiry did not accept the employer's argument that not being pregnant was a *bona fide* occupational requirement. In another situation, the board of inquiry found that the employer discriminated against the employee by refusing her a transfer from the employer's Saskatoon office to the Edmonton office and then terminating her, because she was pregnant. The employer did not want to replace the pregnant employee during her absence on maternity leave. *Infra*, note 7, *Stefanyshyn*; *Wormsbecker* v. *SuperValu and Westfair Foods Ltd.* (1983), 4 C.H.R.R. D/1443.

- 6. Riggio v. Sheppard Coiffures Ltd. (1988), 9 C.H.R.R. D/4520 (Ont. Bd. of Inq.); Stefanyshyn v. 4 Seasons Management Ltd. (4 Seasons Racquet Club) (1987), 8 C.H.R.R. (B.C.H.R.C).
- 7. *Mack* v. *Marivtsan* (1989) 10 C.H.R.R. D/5892 (Sask. Bd. of Inq.).
- 8. Ontario (Human Rights Commission) v. Etobicoke (Borough), [1982] 1 S.C.R. 202.
- 9. Wiens v. Inco Metals Co. (1988), 9 C.H.R.R. D/4795 (Ont. Bd. of Inq.).
- Julie Lord v. Haldimand-Norfolk Police Services Board (June 14, 1995), unreported, Mikus, L. (Ont. Bd. of Inq.). See also, Emrick Plastics v. Ontario (Human Rights Commission) (1992), 16 C.H.R.R. 300 (Div. Ct.), Hienke v. Brownell (1991), 14 C.H.R.R. D/68/ (Ont. Bd. of Inq.); Re Orangeville Police Services Board and Orangeville Police Assn (1994) 40 L.A.C. (4th) 269.
- 11. In a recent decision, *Tammy Turnbull* v. 539821 Ontario Ltd.—Andre's Restaurant (June 21, 1996) unreported, McKellar, M.A. (Ont. Bd. of Inq.), the board of inquiry decided that because the employer knew the employee was pregnant, the employer was responsible for accommodating her even if she did not specifically request accommodation.
- 12. In the decision of Alberta Hospital Association v. Parcels, supra note 3, the Alberta Queen's Bench held that employers can use supplementary Unemployment Insurance (SUB) plans to offset increased costs of maternity leave. It also stated that the benefits provided in this manner do not have to be identical to sick leave benefits as long as they are substantially the same.

13. Crook v. Ontario Cancer Research Foundation (August 26, 1996), unreported, Dawson, B. (Ont. Bd. of Ing.). Please note that at the time of preparing this policy, the Crook decision is under appeal. The Crook decision discussed the practice of "gapping." "Gapping" means granting sick leave benefits to employees who are absent for pregnancy-related reasons benefits prior to childbirth, stopping the benefits when the child is born and reactivating them after the woman's maternity leave absence is completed. The board of inquiry in Crook decided that "gapping" can be a violation of the Code.

Crook also noted that section 25 (2) of the Code does not provide a defence to employers who rely on subsection 8 (c) and 10 of Regulation 282, under the Employment Standards Act to exclude pregnant women from benefits that are provided under a contract of group insurance.

14. While pregnancy is an entirely normal condition, serious medical complications can arise involving some period of time during which the woman is unable to work. Pregnancy itself, cannot be classified as an illness; it is a unique condition which does not fit appropriately into any other category for compensating time lost from work.

After several years of debating whether or not pregnancy is "akin" to sickness or disability, the courts and provincial legislatures have acknowledged that the special needs associated with pregnancy do not correspond to any other healthrelated condition. This recognition was crucial to advancing the development of pregnancy-related benefits.

- 15. See further Stagg v. Intercontinental Packers Ltd. (1992), 18 C.H.R.R. D/392 (Sask. Bd. of Inq.).
- 16. See section 10 of the *Code* for the definition of "harassment."
- 17. Peterson v. Anderson (1992), 15 C.H.R.R. D/1 (Ont. Bd. of Inq.).
- 18. See further Dudnik v. York Condominium Corp. No. 216 (1990), 12 C.H.R.R. D/325 (Ont. Bd. of Inq.), reversed in part (1991) (sub nom. York Condominium Corp. No. 216 v. Dudnik 79 D.L.R. (4th) 161 (Div. Ct.).
- 19. Zurich Insurance Co. v. Ontario (Human Rights Commission) (sum nom. Bates v. Zurich Insurance Co. of Canada) (1985); 6 C.H.R.R. D/2948 (Ont. Bd. of Inq.); reversed 8 C.H.R.R. D/

- 4069; (sub nom. Ontario (Human Rights Commission) v. Zurich Insurance Co.) 10 O.A.C. 220 (Div. Ct.), affirmed (1989), 70 O.R. (2d) 639, leave to appeal granted (1990), 73 O.R. (2d) x (note) (S.C.C.); affirmed [1992] 2 S.C.R. 321.
- 20. Bill 7 amended the *Labour Relations Act* (section 48 (12)(j)) to permit arbitrators to interpret and apply human rights and other employment-related statutes, despite any conflict between those statutes and the terms of the collective agreement.
- 21. See Ontario Secondary School Teachers' Federation (District 34) v. Essex County Board of Education, (April 4, 1996), unreported, Adams, J. (Ont. Div. Ct.).
- 22. Where the sick leave or vacation leave or pay is calculated based on the period of time that a person has been "in service" or "continuously employed," most arbitrators have held that employees who were off work because of maternity leave were entitled to include the period of time that they were not at work. If the collective agreement clearly excludes women who are on maternity leave from accruing sick leave or vacation leave/pay, the grievor should consider filing a human rights complaint with the Commission.
- 23. Where the terms of the collective agreement indicate or imply that seniority is based on "service," seniority should accumulate during maternity leave. If the collective agreement says that seniority will not accrue while off on maternity leave, a complaint can be filed with the Commission.

## **BOARDS OF INQUIRY—FINAL DECISIONS**

Age Garbett v. Gustav Fisher; Margaret Fisher

Potocnik v. City of Thunder Bay

Ancestry Abdolalipour v. Allied Chemical Canada Ltd. et al.

Anishinabie v. The Near New Store et al.

Colour Daniels v. Regional Municipality of Hamilton-Wentworth Police

Services Board et al.

Gosal v. Ministry of Correctional Services Metro West Detention

Centre et al

Naraine v. Ford Motor Company of Canada Ltd. et al.

Creed Gosal v. Ministry of Correctional Services Metro West Detention

Centre et al.

Ethnic Origin Naraine v. Ford Motor Company of Canada Ltd. et al.

Family Status A v. B & C

Handicap Crabtree v. Econoprint et al.

Lewis v. York Region Board of Education, Ministry of Education

Thomson v. Fleetwood Ambulance Service et al.

Harassment Daniels v. Regional Municipality of Hamilton-Wentworth Police

Services Board et al.

Marital Status A v. B & C

Gallagher v. The Regional Municipality of Hamilton-Wentworth

et al.

Ontario Human Rights Commission v. London Monenco

Consultants Limited et al

Place of Origin

Naraine v. Ford Motor Company of Canada Ltd. et al.

Race

Anishinabie v. The Near New Store et al.

Abdolalipour v. Allied Chemical Canada Ltd. et al.

Daniels v. Regional Municipality of Hamilton-Wentworth Police

Services Board et al.

Gosal v. Ministry of Correctional Services Metro West Detention

Centre et al.

Naraine v. Ford Motor Company of Canada Ltd. et al.

Reprisal

Garbett v. Gustav Fisher; Margaret Fisher

Gosal v. Ministry of Correctional Services Metro West Detention

Centre et al.

Sex

Anishinabie v. The Near New Store et al.

Crane v. McDonnell Douglas Canada Ltd. et al.

Crook v. Ontario Cancer Treatment and Research Fdn. et al.

Dwyer, Sims v. Municipality of Metropolitan Toronto and the

Attorney General

Potocnik v. City of Thunder Bay

Turnbull v. Andre's Restaurant et al.

Sexual

**Orientation** 

Dwyer, Sims v. Municipality of Metropolitan Toronto et al.

Receipt of

Public Assistance Garbett v. Gustav Fisher, Margaret Fisher

Rheaume v. Rene Leroux

## **BOARDS OF INQUIRY—SETTLEMENTS**

Age Croal v. Pembroke Civic Hospital et al.

Horton, Levenson, Moen v. SMW et al.

Napast v. Canadian Pacific Hotels Corporation/Royal York Hotel

Pattison, Sethi, Jovanovic v. Robertson Building Systems et al.

Ancestry Lewis, Steiner v. Leeds and Grenville County Board of Education

Medeiros v. Hornepayne Community Hospital et al.

Breach of

Settlement Ontario Human Rights Commission v. McDonnell Douglas

Canada Ltd.

Creed Lewis and Steiner v. Leeds and Grenville County Board of

Education

Ethnic Origin Lewis, Steiner v. Leeds and Grenville County Board of

Education

Family Status Dalziel v. Potomac Construction Limited et al.

Derosa (Bouchard) v. PKG Management Company et al. Henderson, Pirri v. Peel Condominium Corporation No.291

et al.

Wilcox v. Belmont Properties Inc. et al.

Handicap Croal v. Pembroke Civic Hospital et al.

Main, Migneault, Byers v. Sudbury Joint Enterprises Carrying on

Business as City Centre Cinema

Ontario Human Rights Commission v. McDonnell Douglas

Canada Ltd.

Ontario Human Rights Commission v. 700 Bay Street Corp.

Pattison, Sethi, Jovanovic v. Robertson Building Systems et al.

Phillips, Thrasher, Adams-McInnes, Forde v. Whitby Psychiatric

Hospital et al.

Harassment Angot v. Mauricia Kuperman and Jack Mann

Tingor v. Maan teta Itaper man ana sack Mann

Boot v. Jim Martel

Horton, Levenson, Moen v. SMW et al.

Laitila v. The Corporation of the City of Timmins et al.

Segodnia v. Tru-Wall Group Limited et al.

Williams v. Park Property Management Inc. et al.

Place of Origin Derosa (Bouchard) v. PKG Management Company et al.

Wilcox v. Belmont Properties Inc. et al.

Race Burney v. The Governing Council of the University of Toronto

et al.

Medeiros v. Hornepayne Community Hospital et al.

Reprisal Collins v. The Board of Education for the City of Etobicoke et al.

Horton, Levenson, Moen v. SMW et al.

Medeiros v. Hornepayne Community Hospital et al.

Segodnia v. Tru-Wall Group Limited et al. Snowling v. City of St. Catharines et al.

Williams v. Park Property Management Inc. et al.

Receipt of Public Assistance Wilcox v. Belmont Properties Inc. et al.

ex

Angot v. Mauricia Kupermanand, Jack Mann

Dalziel v. Potomac Construction Limited et al.

Derosa (Bouchard) v. PKG Management Company et al.

Dunn, Darosa v. Intercity Ford Sales et al.

Horton, Levenson, Moen v. SMW et al.

Laitila v. The Corporation of the City of Timmins et al.

Page v. Niagara South Board of Education, Thorold Secondary

School et al.

Segodnia v. Tru-Wall Group Limited et al.

Snowling v. City of St. Catharines et al.

Vilneff v. Dreamworld

Wilcox v. Belmont Properties Inc. et al.

Williams v. Park Property Management Inc. et al.

Sex Boot v. Jim Martel

Burns v. McDonnell Douglas Canada Ltd.

Sexual

Harassment Angot v. Mauricia Kuperman and Jack Mann

Boot v. Jim Martel

Horton, Levenson, Moen v. SMW et al.

Laitila v. The Corporation of the City of Timmins et al.

Segodnia v. Tru-Wall Group Limited et al.

Sexual

Orientation Burns v. McDonnell Douglas Canada Ltd.

Sexual

**Solicitation** Boot v. Jim Martel

Segodnia v. Tru-Wall Group Limited et al.

Williams v. Park Property Management Inc. et al.

### **DIVISIONAL COURT**

Age Naimji v. North York Board of Education

Wong v. Ottawa Board of Education et al.

Ancestry Chen v. Ontario Human Rights Commission

Colour Naimji v. North York Board of Education

Citizenship Chen v. Ontario Human Rights Commission

Ethnic Origin (ABOUCHAR & MOFFATT cases)

Le Conseil des Ecoles Francaises de la Communaute Urbaine de Toronto and the Metropolitan Toronto School Board v. Gerry McNeilly, Katherine Laird, Board of Inquiry (Human Rights Code), and the Ontario Human Rights Commission; and James Lawrence Moffatt v. Kinark Child & Family Services, Harry Oswin, Gerry McNeilly, Katherine Laird, Mary Ann McKellar, Board of Inquiry (Human Rights Code), and the

Ontario Human Rights Commission

Chen v. Ontario Human Rights Commission Naimji v. North York Board of Education

**Handicap** Elkas v. The Blush Stop Inc. et al.

Moffatt v. Kinark Child & Family Services et al.

Wong v. Ottawa Board of Education et al.

Place of Origin (ABOUCHAR & MOFFAT cases)

Harassment

Race

Le Conseil des Ecoles Francaises de la Communaute Urbaine de Toronto and the Metropolitan Toronto School Board v. Gerry McNeilly, Katherine Laird, Board of Inquiry (Human Rights Code), and the Ontario Human Rights Commission; and James Lawrence Moffatt v. Kinark Child & Family Services, Harry Oswin, Gerry McNeilly, Katherine Laird, Mary Ann McKellar, Board of Inquiry (Human Rights Code), and the

Ontario Human Rights Commission

Chen v. Ontario Human Rights Commission Naimji v. North York Board of Education

Farooqui v. Ontario Human Rights Commission et al.

Mark v. Ontario Human Rights Commission et al.

Naimji v. North York Board of Education

Ontario Human Rights Commission and Hom v. Elijah Elieff et al

Wong v. Ottawa Board of Education et al.

Naimji v. North York Board of Education Reprisal

Mark v. Ontario Human Rights Commission et al.

Stein v. Ontario Human Rights Commission et al.

Stein v. Ontario Human Rights Commission et al. Sex

Sexual

Solicitation Stein v. Ontario Human Rights Commission et al.

### COURT OF APPEAL

Age; Ancestry; Colour; Creed; Ethnic Origin; Place of Origin; Race; Sex

(QUERESHI case)

Ontario Human Rights Commission v. the Board of Education for the City of Toronto

### SUPREME COURT OF CANADA

Handicap Pokonzie v. Ontario Human Rights Commission

Race Malhotra v. Ontario Human Rights Commission

### **FINANCIAL** STATEMENT

The Commission's approved year-end allocation for the 1996-97 fiscal year was \$10,818,100. The Ontario Human Rights Commis sion operates 16 offices throughout the province, including a head office in Toronto. In addition to investigating and conciliating formal human rights complaints, the Commission's staff addressed 60,520 inquiries and made 22,607 referrals.

### **Publications of the Commission**

Human Rights Code, 1981 [updated 1995] (available through the Government of Ontario Bookstore)

Accommodation of Persons with Disabilities

Declaration of Management Policy

Developing Procedures to Resolve Human Righs Complaints within your Organization

**Employment Application Forms & Interviews** 

Exceptions to the Equality Rights Provision of the Human Rights Code in the Workplace

Guidelines for Assessing Accommodation Requirements for Persons with Disabilities

Guidelines on Special Programs

Human Rights in Ontario

If You Have a Human Rights Complaint

Know Your Rights Series:

- Female Genital Mutilation and the Human Rights Code
- AIDS & AIDS-related Illness and the Human Rights Code
- Sexual Orientation and the Human Rights Code
- Language
- Creed
- Pregnancy

Ontario Human Rights Commission—Annual Report

Policy on Discrimination and Language

Policy on Drug and Alcohol Testing

Policy on Employment-related Medical Information

Policy on Height and Weight Requirements

Policy on HIV/AIDS-related discrimination

Policy on Racial Slurs & Harassment & Racial Jokes

Policy on Requiring a Driver's Licence as a Condition of Employment

Policy on Sexual Harassment & Inappropriate Gender-related Comment and Conduct

Policy Statement with Respect to Exclusionary Scholarships

Racial Slurs & Harassment & Racial Jokes

Sexual Harassment and Other Comments or Actions about a Person's Sex

# **Board of Inquiry Decisions**

Board of Inquiry Decisions are distributed by the Board of Inquiry (Human Rights) Office and can be found at the following libraries:

Metropolitan Toronto Reference Library 789 Yonge Street Toronto, ON M4W 2G8

Brock University Library 500 Glenridge Avenue St. Catharines, ON L2S 3A1

University of Waterloo Library 200 University Avenue West Waterloo, ON N2L 3G1

Lakehead University Library Oliver Road Thunder Bay, ON P7B 5E1

Laurentian University Library Ramsey Lake Road Sudbury, ON P3E 2C6

Hamilton Public Library 55 York Blvd. Hamilton, ON L8N 4E4

Kingston Public Library 130 Johnson Street Kingston, ON K7L 1X8

Kitchener Public Library 85 Queen Street North Kitchener, ON N2H 2H1

Ottawa Public Library 120 Metcalfe Street Ottawa, ON K1P 5M2

St. Catharines Public Library 54 Church Street St. Catharines, ON L2R 7K2

Thunder Bay Public Library 216 South Brodie Thunder Bay, ON P7E 1C2

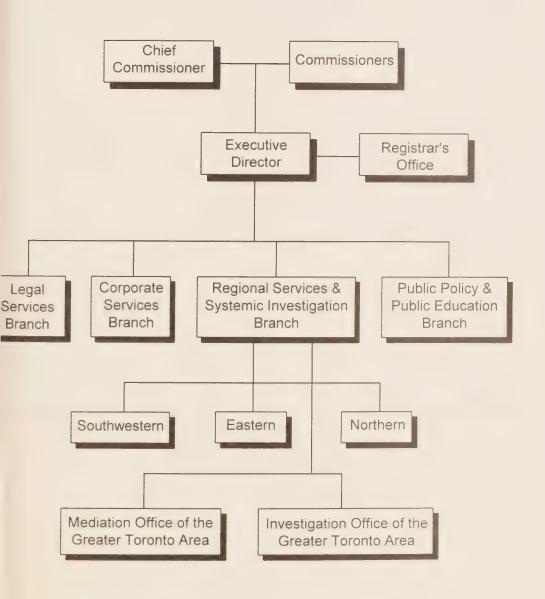
Waterloo Public Library 35 Albert Street Waterloo, ON N2L 5E2

Windsor Public Library 850 Ouellette Avenue Windsor, ON N9A 4M9

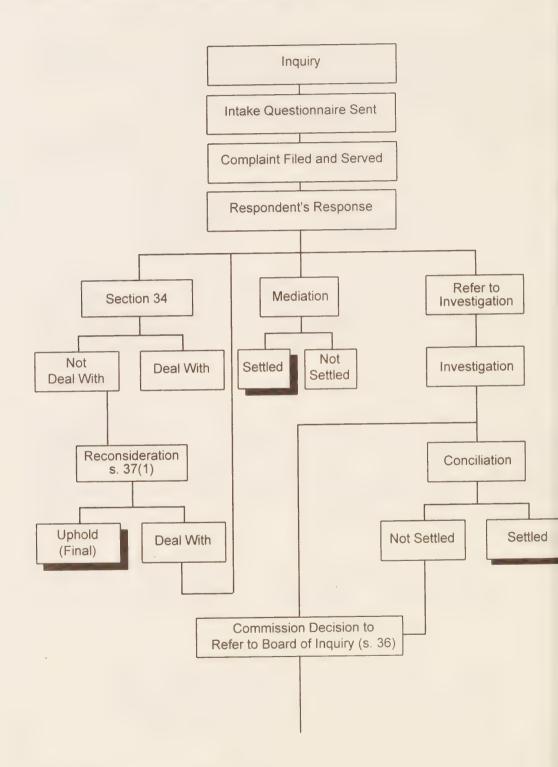
Sault Ste. Marie Public Library 50 East Street Sault Ste. Marie, ON P6A 3c3

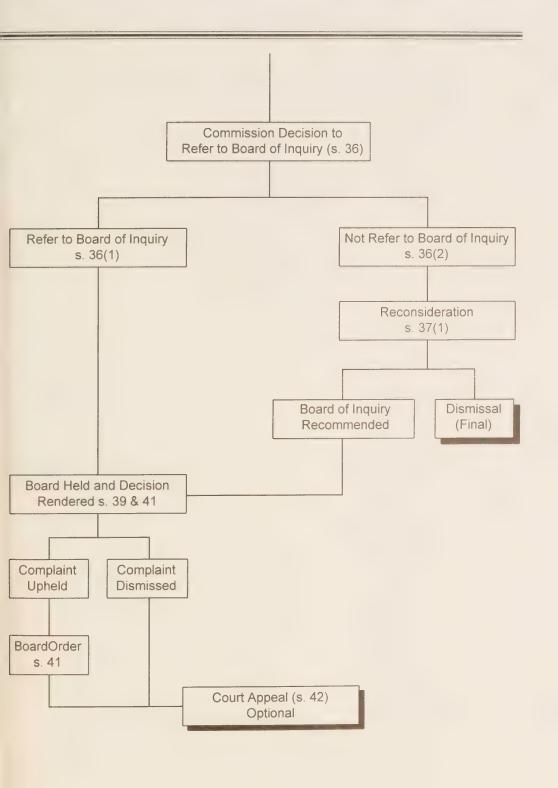
## **)rganizational Chart**

# The Ontario Human Rights Commission



# **Complaints Processing Chart**







### THE ONTARIO HUMAN RIGHTS COMMISSION

How do you contact the Commission?

General Information and Inquiries (Toll Free) 1-800-387-9080

TDD Access Ontario 1-800-308-5561

TDD for 416 and 905 exchanges 1-800-309-1129

Web Site: www.ohrc.on.ca

#### **HEAD OFFICE**

Ontario Human Rights Commission 180 Dundas Street W. 8th Floor Toronto, Ontario M7A 2R9 Tel: (416) 314-4500 TDD: (416) 314-4535

# GREATER TORONTO REGION MEDIATION OFFICE

180 Dundas St. W. 7th floor M7A 2R9

# GREATER TORONTO REGION INVESTIGATION OFFICE

180 Dundas St. W. 7th floor M7A 2R9

#### **HAMILTON**

110 King Street West Suite 310 L8P 4S6

#### **KINGSTON**

80 Queen Street Suite 202 K7K 6W7

#### LONDON

231 Dundas Street Suite 303 N6A 1H1

#### **OTTAWA**

255 Albert Street Suite 401 K1P 6A9

#### **SUDBURY**

159 Cedar Street 2nd Floor P3E 6A5

#### THUNDER BAY

435 S. James St. Suite 337 P7E 6E3

#### **TIMMINS**

210 Spruce St. South Suite 103 P4N 2M5

#### WINDSOR

215 Eugenie Street West Suite 100 N8X 2X7





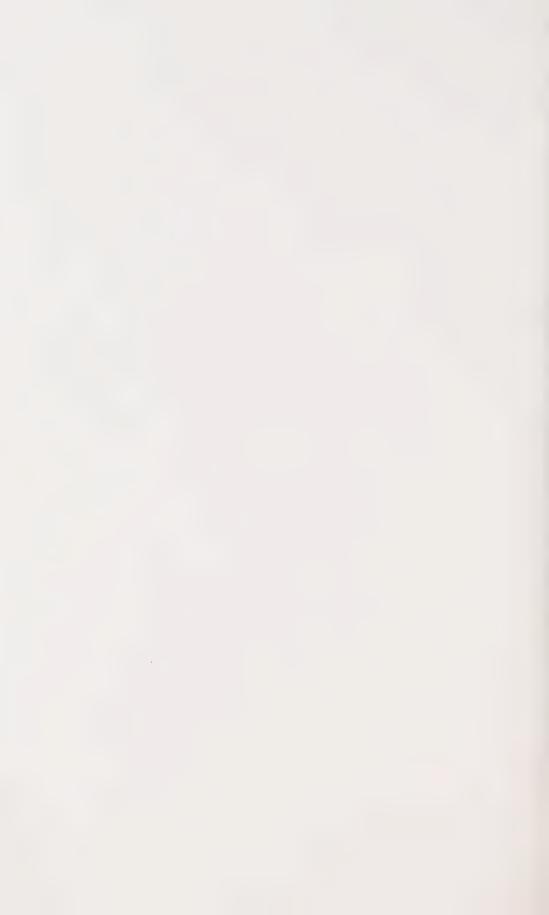


Ontario Human Rights Commission Commission
ontarienne des
droits de la personne



Annual Report 1998/1999

"Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." 1948-1998 Universal Declaration of Human Rights



# Annual Report 1998–1999

Ontario Human Rights Commission

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Ontario Human Rights Commission Commission ontarienne des droits de la personne

Chief Commissioner

Commissaire en chef

180 Dundas Street West Toronto ON M7A 2R9 Tel: 416.314.4541

180 rue Dundas ouest Toronto ON M7A 2R9 Tél: 416.314.4541



June, 1999

Honourable Isabel Bassett
Minister of Citizenship, Culture and Recreation
6th Floor, 77 Bloor Street West
Toronto, Ontario
M7A 2R9

#### Dear Minister:

Pursuant to Section 31(1) of the Ontario *Human Rights Code*, it is my pleasure to provide to you the Annual Report of the Ontario Human Rights Commission for the fiscal year 1998-1999, for submission to the Legislative Assembly of Ontario.

This report reflects the activities of the Commission to March 31, 1999.

Yours sincerely,

Keith C. Norton, Q.C., B.A., LL.B.

Chief Commissioner

### Message from the Chief Commissioner



I am pleased to report to the Honourable Minister of Citizenship, Culture and Recreation, the Legislative Assembly and the people of Ontario on the work of the Commission during the 1998–99 fiscal year. The Commission continues to face many challenges as we carry out our mandate under the Ontario *Human Rights Code*.

For an unprecedented third year in a row, I can report solid progress in the reduction of the caseload. Despite a 35% increase in new complaints this year over last, we have again resolved more cases than we took in. For this achievement I want to thank the staff of the Commission for their hard work and commitment to improving our service to the people of Ontario.

I also want to thank the management team which has demonstrated that money alone is not the answer to the problems the Commission has faced historically. Rather, creative, progressive and sound management is an essential component.

Our mandate is to advance the public policy as set out in the preamble to the *Code*:

"to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination that is contrary to law, and having as its aim the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and able to contribute fully to the development and well-being of the community and the Province."

It has also been said that a society will be judged by how well it provides for its most vulnerable citizens. I feel compelled to urge each and every one of us to focus our attention and energy upon the needs of the homeless among us. Every level of government, the housing industry, community groups and each of us who is more fortunate must assume some responsibility to press for a more aggressive effort to make available appropriate and adequate accommodation for these our neighbours.

If anyone doubts the seriousness of this problem, you need only walk with me from my home to my office any day of the week, to get a sense of its magnitude and its impact upon the physical well-being, the dignity and the sense of self-worth of the individuals affected.

I conclude by expressing my growing confidence that the Commission, following several years of major change, is well positioned to carry out its mandate more effectively and that the goal of having a current caseload is within our grasp.

Keith C. Norton, Q.C., B.A., LL.B.

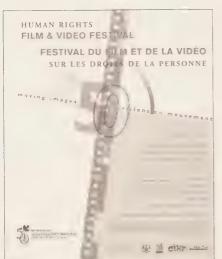
Chief Commissioner

### Highlights of the Year

#### ABOUT THE ONTARIO HUMAN RIGHTS COMMISSION

The Ontario Human Rights Commission (OHRC or the Commission) is an arm's length agency of government accountable to the Legislature of Ontario through the Minister of Citizenship, Culture and Recreation. The Commission's principal functions are set out in the *Human Rights Code* (the *Code*) and include the investigation and settlement of human rights complaints. Under the *Code*, the Commission's work also includes promoting human rights.

The *Code* requires the Commission to submit an annual report on the activities of the fiscal year ending March 31.



#### HIGHLIGHTS 1998-99

In 1998, we celebrated the 50th anniversary of the Universal Declaration of Human Rights here and around the world. Ontario had celebrations marked by conferences and special events, and the Commission was especially proud to have been a major partner with the Greater Toronto Initiative and the City of Toronto in the first annual Human Rights Film and Video Festival held in December 1998. Also in 1998, the Government of Ontario introduced an Award for Outstanding Achievement in Human Rights, recognizing exceptional contributions of individuals and groups in this province.

1998–99 was also an important year for human rights decisions from the courts and boards of inquiry. The Court upheld the Board of Inquiry's decision in the matter of *Entrop v. Imperial Oil*, a case dealing with discriminatory drug and alcohol testing in the workplace and its impact on persons with disabilities.

The government also held consultations with disability groups on a discussion paper, *Preventing and Removing Barriers* for Ontarians with Disabilities, a document drafted as a prelude to new legislation. Although the Ontarians with Disabilities Act received first reading in November 1998, it was not passed when

the House prorogued in December 1998. The proposed Act garnered significant public and media attention.

In the social area of housing, the Commission obtained a favourable position in *Kearney*, another important case. The case involved a challenge to the practice of screening tenants based on minimum income criteria. The practice involves a "30 per cent rule," which is used to assess rental applications. Under this rule, tenant applicants have to disclose their income, and if the rent amounts to more than 30 per cent of the person's income, the landlord often refuses to rent the property.

The Board of Inquiry decided that this practice is contrary to the *Human Rights Code*. These types of screening tests were shown to have an adverse impact on single parents, recent immigrants and refugees, youth and those who receive social assistance.

In June 1998, the Ontario legislature decided to proceed with legislation that would, among other things, allow landlords to ask tenants about income information in conjunction with other information, as a way to screen applicants. The *Tenant Protection Act* and amendments to the *Human Rights Code* became law.

The Commission's work also includes reviewing and providing input on reports that Canada submits to the United Nations' Committee on Economic, Social and Cultural Rights.

#### KEY OHRC ACCOMPLISHMENTS

The Commission made significant strides in a number of areas during the 1998–99 fiscal year. These included:

- ➤ improving the timeliness of handling the complaints caseload;
- ➤ making its services to the public more efficient and accessible; and
- ➤ increasing its education and information activities.

Award-winning information technology has also complemented the Commission's efforts to streamline and improve case processing. Known as the Case Management Information System (CMIS), this program enables the Commission to track and document each inquiry through every step of the complaints process including initial filing, mediation, investigation and resolution.

#### In 1998–99, the Commission:

- ➤ had a caseload of 2,386 as of March 31, 1999 compared to 2,745 at the same time last year;
- ➤ opened 1,850 cases and resolved 2,218 cases, making 1998–99 one of the most productive years in the Commission's history, and for the third consecutive year, resolved more cases than it opened:
- ➤ achieved a median age of cases that is under 12 months and dropping; and
- ➤ sent 92 complaints to the Board of Inquiry (Human Rights), the largest number in the history of the Commission with the exception of the 1992–93 fiscal year.

#### HIGHLIGHTS IN INQUIRIES AND CASE PROCESSING

During the past year, the Commission's call centre handled over 199,000 calls. A certain number of callers opted for the automated message, which provides basic information on how to contact the Commission, how to file a complaint and other information about the human rights process. A total of 40,112 callers spoke with inquiry service representatives. On average, the waiting time for these callers was 65 seconds. As part of this service, the Intake Unit assisted 1,850 persons in filing their complaints.

The Mediation Office is now the first step in the Commission's process after a complaint is filed. Mediation gives the parties a structured and speedy opportunity to resolve their complaint with Commission staff very early in the process. In 1998–99, Mediation Services resolved almost half of all complaints (1,065 out of 2,218 cases resolved by the Commission in 1998–1999). The median completion time for these cases was six months. These high rates of success in resolving cases "up front" are having a positive impact on the Commission's caseload.

With a steady decrease in caseload, the Commission can focus on addressing cases that are over two years old. This will enable the Commission to meet its commitment to the Ontario public to achieve a current caseload where all complaints are resolved within an average of twelve months. Based on current trends indicating a median age of open cases of less than 12 months, this goal is within reach.

#### **EDUCATION AND COMMUNICATIONS ACTIVITIES**

Increasing public awareness and understanding of human rights is also an important part of the Commission's work. As the Commission reduces its caseload, there has been a renewed focus on the Commission's responsibilities in this area. 1998–99 has been one of the most active years in Commission history. Commissioners and Commission staff delivered education and training to over 4,500 people this year. The Commission also:

- ➤ developed strategic partnerships for education and outreach with not-for-profit and employers' associations, including the Human Resources Professionals Association of Ontario;
- ➤ initiated outreach to aboriginal communities focusing on human rights in the workplace through workplace training initiatives with Miziwe Biik, the Native Women's Resource Centre and the Native Friendship Centre in Fort Frances;
- ➤ launched *Human Rights: Policies and Practice in Ontario*, a publication featuring an up-to-date compilation of all the Commission's new policy work. The book was sent to thousands of community and advocacy groups in Ontario and across Canada;
- ➤ conducted a province-wide public awareness campaign on sexual harassment in May 1998 on public transit;
- ➤ provided information and assistance to over 1,000 employers and organizations, including policy advice on how to develop in-house anti-discrimination policies and practices; and
- ➤ was a major partner in the first Toronto Human Rights Film and Video Festival in December 1998.



### Issues in Human Rights

#### DISABILITY

In 1998–99, discrimination against people with disabilities remained one of the largest areas of complaints filed with the Commission. Disability was cited as a ground 760 times in complaints filed this year and this represented 25% of all grounds cited.

Government initiatives were introduced for persons with disabilities this year, including the Ontario Disability Support Program from the Ministry of Community and Social Services in February 1999 and the tabling of the Ontarians with Disabilities Act (ODA) by the Minister of Citizenship, Culture and Recreation.

The ODA began with a discussion paper, *Preventing and Removing Barriers for Ontarians with Disabilities*. This document was drafted as a prelude to new legislation and released in August 1998.

The Commission responded to the paper, noting that the *Human Rights Code* alone has not been enough to achieve equal participation in society by people with disabilities. The Commission stressed the need for meaningful legislation with "teeth". The Commission recommended that the government implement both regulatory and non-regulatory approaches to removing barriers. Also, barriers should be defined more broadly than those related to physical impediments. The Commission made a number of specific suggestions related to identifying barriers, removing them, and monitoring progress on their removal.

Following consultation on its discussion paper, the government introduced the *Ontarians with Disabilities Act*. Although the Act received first reading in November 1998, it was not passed when the House prorogued in December 1998. The Minister has stated her intention to reintroduce the legislation in 1999.

The Ontario Human Rights Commission continues to follow these disability issues closely on a number of levels, ranging from processing complaints and presenting cases before boards and courts, to new policy work.

#### Policy

#### Accommodation of Persons with Disabilities

In 1998–99, Commission staff undertook consultations on proposed changes to the *Guidelines on Assessing Accommodation Requirements for Persons with Disabilities*. The *Guidelines* are the Commission's interpretation of provisions relating to accommodation and undue hardship as set out in the *Code*. Throughout the consultation process, the Commission sought input on recent developments and, more specifically, on updates and revisions related to the standard of undue hardship and voluntary assumption of risk.

Further consultations with disability-related groups and organizations throughout the province, as well as with non-disability groups and organizations, such as employers' groups, business associations, service providers, and colleges and universities, are planned for Spring 1999.

In partnership with disability groups, the Commission also held a two-day staff training conference in March 1999. The session sought to heighten sensitivity and awareness of disability issues. It also provided staff and disability groups with a unique opportunity to network as well as to communicate the Commission's commitment to engage groups in a discussion of disability issues and the needs of this community.

The Commission is committed to ensuring that all its services and facilities are accessible to clients with disabilities. The Canadian Hearing Society made inquiries this year about access to the Commission and the Ontario Public Service for clients who are deaf, deafened or hard-of-hearing. The Commission clarified its internal policy that sign language and text-based interpretation services are considered disability accommodations and are provided free of charge to clients upon

request. The Commission wrote to Management Board Secretariat on behalf of the Canadian Hearing Society regarding disability access to all government services.

In addition, the Commission prepared a review plan containing a policy framework for evaluating the Commission's own accessibility which is expected to take place in 1999–2000.

#### HIV/AIDS Discrimination

The Commission met with representatives from the Canadian HIV/AIDS Legal Network and the Canadian AIDS Society in September 1998 to discuss their joint paper, Legal, Ethical and Human Rights Issues Raised by HIV/AIDS: Where Do We Go From Here? Planning for 1998–2003. The Commission also provided written comment on their most recent document, HIV Testing and Confidentiality: Final Report.

#### COMMISSION CASES

Pat Muise v. Elmwell Investments Limited, E. I. Grossman and Morris Altman (Board settlement – November 12, 1998)

The complainant rented an apartment in a building owned by the respondent. She suffered from chronic emphysema and needed a motorized scooter as well as modifications to the building for unassisted access to and from the building, her individual unit, and the underground garage.

Under a mediated settlement, the respondents agreed to:

- ➤ pay \$3,000 in general damages; and
- ➤ modify the building and underground garage to improve accessibility.

Bob Brown, Cyril Henry Dargewitcz, Nancy Dewell, by her Litigation Guardian Irvan Dewell and Mark Todd, by his Litigation Guardian Reina Todd v. Her Majesty the Queen in Right of Ontario and Ministry of Health (Board settlement – May 25, 1998)

The four disabled complainants had applied to the Assistive Devices Program (ADP) for financial assistance to buy an

assistive device. They were turned down because they did not meet the age restriction that applied to the device they needed. The complainants alleged that the age-based eligibility criteria were discriminatory.

At one time, *all* of the device categories in the ADP were subject to age-based eligibility criteria. In the years since the introduction of the program in 1982, most of the age restrictions have gradually been removed. The device categories at issue in these complaints were the only categories that still carried restrictions.

According to the settlement reached by the parties, the respondent will:

- ➤ pay the complainants compensation for the expenses they incurred toward the purchase of the necessary assistive devices (between the time of application to the ADP and the present) that would not have been incurred had they been eligible for financial assistance under the program;
- ➤ compensate the complainants for anticipated *future* expenses (from the present time until January 4, 1999) that would, but for the age restriction, be covered by the ADP;
- > write the complainants a letter of regret; and
- ➤ amend the ADP so that by January 4, 1999, it "shall not contain criteria which either directly or indirectly violate the Ontario *Human Rights Code.*"

The Commission is currently reviewing the new program introduced in January 1999.

Brad Thomson v. 501781 Ontario Limited operating as Fleetwood Ambulance Service, and Ontario Public Service Employees Union (Divisional Court decision – January 25, 1999)

Mr. Thomson's complaint was based on a collective agreement which reduced an employee's vacation entitlement by 1/12 for each full month that an employee was absent from work. The complainant had been absent for several full months because of an injury for which he received Workers' Compensation benefits.

#### Result at Board: The Board of Inquiry held that:

- ➤ a policy which pro-rates vacation entitlement for each month worked has an adverse impact on persons with disabilities, and that, therefore, the collective agreement provisions breached the *Code*; and
- ➤ OPSEU was not liable, as it was able to establish that it had tried for years to remove the clause from the agreement.

The Board ordered the employer to:

- > stop applying the clause in question; and
- ➤ pay the complainant the value of the lost days of vacation plus interest, and \$1,000 in general damages.

The respondent appealed to the Divisional Court.

Result at Divisional Court: In finding for the respondent, the Divisional Court considered itself bound by the very recent Court of Appeal decision in *Orillia Soldiers' Memorial Hospital*, which held that an analogous provision — another employment benefit tied to working — was "reasonable and *bona fide* in the circumstances." The Court of Appeal commented that, by the very nature of the issue, "accommodation" was not possible. The Court set aside the Board of Inquiry decision and ordered the Commission to pay \$3,000 in costs.

**Status:** The Commission is seeking leave to appeal, pending results in the ongoing appeal of the *Orillia Soldiers' Memorial Hospital* case.

# Martin Entrop v. Imperial Oil Limited (On appeal to the Court of Appeal)

The complainant had been employed by the respondent company for 18 years when the respondent introduced a new Alcohol and Drug Policy. Under this policy, the complainant was required to disclose to the respondent that some years prior, he had had an alcohol problem.

As a consequence of this forced disclosure, and again pursuant to the provisions of the company's Alcohol and Drug Policy, the complainant was removed from his safety-sensitive job to a less desirable job. As well, the complainant was subject to a restrictive reinstatement process that involved ongoing undertakings and controls. He filed a complaint with the Commission alleging that he had been discriminated against on the basis of handicap and that he had been subject to reprisal.

**Result at Board:** In a series of separate decisions, the Board decided in favour of the complainant on each issue. The respondent appealed to the Divisional Court.

**Result on Appeal:** On February 6, 1998, the Divisional Court dismissed the respondent's appeal in its entirety and held that the Board's findings were "reasonable" and supported by the evidence, and that the Board had correctly interpreted sections 5 and 17 of the *Code*. The respondents successfully sought leave to appeal to the Court of Appeal.

**Status:** The Ontario Court of Appeal heard the appeal on January 18 and 19, 1999. The Court's decision is pending.

#### TENANT PROTECTION AND RECFIPT OF PUBLIC ASSISTANCE

A key factor in the fight against homelessness is the ability to access affordable housing. In Ontario, the Commission has actively supported the need to protect individuals from landlords who screen potential tenants solely based on their income information. Several studies show that refusal to rent because of an absence of rental or credit history can result in adverse discrimination for vulnerable persons on grounds prohibited under the *Code*, such as age, place of origin, receipt of public assistance or family status.

The following cases describe this year's developments before the courts and boards of inquiry in this area.

#### COMMISSION CASES

Dawn Kearney, JL and Catarina Luis v. Bramalea Limited (now Bramalea Inc.), The Shelter Corporation and Creccal Investments Ltd. (Board of Inquiry decision – December 22, 1998)

This case dealt with the legitimacy of the "30 per cent rule," a standard widely used by landlords when assessing rental applications. Under the "30 per cent rule", landlords require tenant applicants to disclose their income, and based on this information, they decide whether or not to rent to them. If the rent amounts to more than 30 per cent of the person's income, the landlord often refuses to rent the property.

The effect of the "30 per cent rule" is to require that prospective tenants have a minimum level of income to be eligible for accommodation. The complainants challenged this practice, alleging that this criterion excludes persons who are young, female, single, new to Canada, single parents and/or those in receipt of public assistance from acquiring decent rental space.

**Result at Board:** The Board of Inquiry held a lengthy and complex hearing. It ruled that:

- ➤ the respondent Bramalea used a minimum income criterion of 25% rent-to-income ratio in assessing applications; respondent Shelter used a range from 30% to 34%; respondent Creccal used a criterion of \$22,000 annual income;
- ➤ statistical evidence demonstrated that landlords' use of such criteria has a disparate impact on people on grounds prohibited under the *Code*, such as race, sex, marital status, family status, citizenship, place of origin, age and receipt of public assistance:
- ➤ the landlords did not establish a defence under section 11 of the *Code*, since they could not prove that using such criteria was reasonable or *bona fide*. Moreover, since using a rent-to-income ratio (or a minimum income criterion) has no predictive value as to whether a tenant will default, the landlords could not establish that stopping the use of such criteria would cause undue hardship; and

➤ rent-to-income ratios and minimum income criteria breach the *Code*, whether used alone or in conjunction with other criteria or requirements.

The Board ordered the respondents to pay general damages to the three complainants – \$5,000 for one and \$4,000 for the other two, as well as certain specific damages.

(Note: Currently, eight more complaints dealing with similar issues stand before the Board of Inquiry. The events that gave rise to the complaints in Kearney and the cases currently before the Board of Inquiry pre-dated amendments to the Code and to the Tenant Protection Act (discussed later). The Board of Inquiry decision in Kearney does not consider the new legislative changes.)

**Status:** The respondents have filed a Notice of Appeal to Divisional Court.

OHRC and Lise Rhéaume v. René Leroux and Rencar Construction Ltd. (Divisional Court decision – January 25, 1999)

The complainant alleged that she spoke to the appellant when she called about renting an apartment that had been advertised in a local newspaper. She claimed that when she informed the appellant she was on "Mother's Allowance" in response to his question as to where she worked, he told her that he did not rent to people receiving Mother's Allowance. The appellant denied having this conversation, but said that he spoke briefly to a woman who would not disclose the amount of income she receives from the Province.

**Result at Board:** In its August 23, 1996 decision, the Board found that the appellant discriminated against the complainant in accommodation by refusing to consider her as a prospective tenant because she was receiving public assistance. The Board preferred the complainant's evidence to that of the appellant, and found that although the appellant did rent to tenants on public assistance, he decided not to consider the complainant's

application because she was receiving Mother's Allowance. The respondent appealed the decision.

**Result at Divisional Court:** In a two to one split, the Divisional Court upheld the Board's finding of discrimination in housing on the basis of receipt of social assistance. The issues before the court were procedural in nature: delay, addition of parties to the proceeding and the necessity of having a transcript of the proceedings before the Board.

The majority held that:

- ➤ a four-year delay was unfortunate, but did not impact on the fairness of this hearing;
- ➤ adding the corporation as a respondent raised no new issues before the Board of Inquiry; and
- ➤ the absence of a transcript did not amount to a denial of natural justice.

## Legislative developments

On June 17, 1998, Ontario's new *Tenant Protection Act* came into effect. During debate on the *Act*, the Commission had argued that landlords should not screen potential tenants based on income information. Although the *Act* does allow the use of income information, it is restricted to prescribed circumstances.

Section 212(1) of the new *Act* amends the *Code* by creating section 21(3), an exception to the *Code*'s section 2 protection against discrimination in housing accommodation. The exception allows the use of income information, but only in specific instances as outlined in new regulations.

- ➤ These new regulations permit a landlord to ask for and consider income information, but only in conjunction with one or more other forms of information, such as rental history, credit references and credit checks, if available.
- ➤ Landlords may not use minimum income as a criterion nor may they apply a maximum rent-to-income ratio as a cut-off rule in the absence of evidence that they considered other information where such information is available.

- ➤ Under the regulations, landlords may not refuse to rent to someone simply because rental history, credit check or credit reference information does not exist.
- ➤ Landlords who conduct credit checks without seeking authorization from the rental applicants may not be able to benefit from the regulations' protection.

The Commission will continue to accept complaints from people who believe they have suffered discrimination in housing accommodation under the *Code* in order to support an understanding that is consistent with basic principles of human rights and the law.

#### INSURANCE

In 1998–99, the Commission finalized a research paper on human rights in insurance. A background paper outlines how the risk criteria used by insurance companies are often based on stereotypes and personal characteristics, which constitute a prohibited ground under the *Code*. The paper outlines steps the Commission might take in response to such problems.

These include:

- ➤ citing legal principles that promote protection from discrimination in insurance on prohibited grounds of the *Code* when litigating cases;
- ➤ reviewing complaints with an eye to further developing positive case law in this area;
- ➤ continuing to argue in favour of insurance classification schemes that do not determine risk based on characteristics which constitute a prohibited ground under the *Code*;
- ➤ seeking an amendment to Regulation 321 of the *Employment Standards Act*, which discriminates against pregnant women in employment insurance benefits;
- > supporting increased public control over underwriting criteria that can be used in disability insurance; and
- engaging in an ongoing dialogue with the Financial Services Commission of Ontario (FSCO) regarding issues related to discrimination in insurance.

The Commission sought the input of the FSCO, which offered preliminary comments. A first meeting was recently held between the two agencies. The Commission is planning further consultation and the release of a final paper with recommendations in the coming fiscal year.

The Commission also met with a large private insurance company, upon its request, to discuss the application of the *Human Rights Code* from both an employer and service provider perspective.

## RACE AND RACE-RELATED GROUNDS

The grounds of race and colour were cited most frequently among complaints filed in 1998–99. These grounds were cited 828 times, and represented 27% of all grounds cited.

In the past year, the Commission developed a proposal to conduct research in the area of multiple and intersecting grounds of discrimination. This is an emerging issue in dialogues on human rights, equality, discrimination and equal treatment. Preliminary indications show that persons who experience discrimination on more than one ground of discrimination experience the impact in a way that is significantly greater than the sum of the individual parts. Race is a key area of this research project.

The issue of multiple grounds was raised at the 1998 meeting of the Canadian Association of Statutory Human Rights Agencies (CASHRA) in Halifax, Nova Scotia. The Commission will be examining the impact of multiple and intersecting grounds of discrimination with a view to developing an analytical model that is significantly different from the current single-ground approach.

#### **COMMISSION CASES**

Maxwell B. Nelson v. Durham Board of Education and Don Peel (Board of Inquiry decision – August 28, 1998)

Mr. Nelson worked for the Durham Board of Education, first as a teacher, then as the first black vice-principal. He aspired

to become a principal, but was unsuccessful. At the time of Mr. Nelson's attempts to become a principal, there were no black principals. Mr. Nelson alleged discriminatory treatment in his experiences between 1977 and 1989, when he resigned from the school board.

**Result at Board:** The Board of Inquiry found *direct* discrimination in the following areas of the complainant's employment:

- ➤ delay in the complainant's reclassification from vice-principal "B" to vice-principal "A";
- ➤ delay in granting the complainant's "release time" (time away from teaching duties to help administrators carry out administrative duties);
- ➤ treatment of the complainant in his unsuccessful applications for promotion to principal;
- ➤ treatment of the complainant in his unsuccessful applications for transfer (to position of vice-principal at other schools of the Durham Board); and
- ➤ unfair allocation of release time following Nelson's transfer to a different school (after years of unsuccessful attempts to transfer).

The Board also found evidence of *systemic* discrimination, noting that the following elements created a climate in which characteristics such as race and colour became factors in decisions made by the school board:

- ➤ informal guidelines governing employment processes (up to 1987);
- ➤ inconsistent application of criteria for advancement;
- > subjective decision-making regarding approval for courses required for promotion; and
- ➤ lack of clear or written policies with respect to promotion, rotation (transfer), and release time.

**Status:** The Board will address the issue of remedy in late March 1999.

# Coldmatic Refrigeration of Canada, George Zafir and Brian Palmer v. Luis Espinoza and OHRC (Divisional Court decision – October 13, 1998)

The complainant, Luis Espinoza, was fired after he was involved in a fight at work provoked in part by a racial slur.

Mr. Espinoza alleged that Spanish-speaking workers with the respondent company were subjected to insulting and humiliating comments as well as differential treatment, such as arbitrary discipline and excessive monitoring.

**Result at Board:** In its 1995 decision, the Board of Inquiry held that:

- ➤ the complainant had been subjected to discrimination in the workplace on the basis of his ethnic origin and place of origin;
- ➤ language, one of the many identifying features of ethnic origin, can be addressed through that protected ground; and
- ➤ an imbalance of power was the operative dynamic in the workplace and it had a discriminatory effect.

The Board order included monetary damages and broad-reaching policy remedies designed to prevent future discrimination and harassment. The respondents appealed the Board decision to the Divisional Court.

**Result at Divisional Court:** The Court dismissed the appeal and supported the Board's findings, holding that the Board:

- ➤ did not err in considering hearsay evidence as to the timing of Mr. Espinoza's dismissal as this evidence was not critical to its finding on that issue;
- ➤ did not err in admitting similar fact evidence pertaining to the applicant company's subsequent conduct in the circumstances of this case; and
- ➤ had ample evidence to support its conclusion that a poisoned environment existed and that the treatment accorded to Mr. Espinoza by the appellants was based on his ethnic origin and place of origin.

The Court awarded costs of \$3,000 to Mr. Espinoza.

# Naraine v. Ford Motor Co. Ltd. (on appeal to the Divisional Court)

The complainant, a person of East Indian origin from Guyana, worked for the Ford Motor Company in Windsor for over nine years. He alleged that his working environment was poisoned by racist graffiti and racist comments that were directed at him and, in some instances, at other visible minority employees. The complainant also alleged that he was given inferior work assignments and training, and that he was subject to a higher level of scrutiny and discipline than were other employees. In the last three years of his employment, Mr. Naraine was subject to progressive discipline, ultimately resulting in his termination for an alleged altercation with a co-worker.

#### Result at Board: The Board found that:

- ➤ apart from one racially charged incident with a security guard, there was no direct causal connection between the disciplinary incidents and race;
- ➤ name-calling and graffiti should be recognized for their inherently destructive effect on racial equality in the workplace;
- evidence of direct supervisory involvement in and knowledge of the poisoned work environment was sufficient to establish corporate liability;
- ➤ as the complainant was increasingly taunted in the poisoned work environment, his outbursts became more frequent;
- ➤ the respondent failed to take seriously or investigate the allegations of unfair treatment;
- ➤ a causal connection between the poisoned environment and the complainant's termination was established; and
- ➤ this was not an appropriate case for any findings of personal liability given the systemic nature of the racial discrimination.

The Board ruled on the issue of damages in a separate, December 1996 decision in which it ordered the respondent to:

- reinstate Mr. Naraine;
- > make the necessary training available to Mr. Naraine so that

he could become conversant with technological developments since his termination;

- ➤ pay for any reasonable counselling expenses associated with the reintegration process;
- ➤ pay special damages, including compensation for loss of seniority increments, pension benefits, employment benefits and vacation entitlement to Mr. Naraine for the amount that he would have earned from the date of discharge to the date he began to work with another company; and
- ➤ pay \$30,000 in general damages: \$20,000 as compensation for the "intrinsic value of the infringement of his rights and as compensation for the experience of victimization," and \$10,000 for "mental anguish caused by the respondent's recklessness in contravening the Code."

The Board also awarded prejudgement interest. The respondent filed a Notice of Appeal for both Board decisions.

**Status:** The appeal was heard in Divisional Court on February 4, 1999. The Court's decision is pending.

Michael McKinnon v. Her Majesty the Queen in Right of Ontario (Ministry of Correctional Services), Frank Geswaldo, George Simpson, P. James and Jim Hume (Board of Inquiry decision – April 28, 1998)

The complainant, a person of native Canadian ancestry, worked as a correctional officer with the Ministry of Correctional Services. The complainant alleged discrimination and harassment in employment on the basis of race, ancestry, and place of origin, and alleged acts of reprisal against him for claiming his rights under the *Code*.

## Result at Board: The Board held that:

- ➤ the complainant suffered discrimination, harassment, and reprisals at the hands of the respondents;
- ➤ the personal respondents were liable for racial discrimination and harassment for their use of racial slurs, and their

involvement in several of the "targeting incidents";

- ➤ additional personal respondents, both members of senior management, were liable for their role in discriminatory decisions concerning the complainant's working conditions;
- ➤ the complainant and his wife had been discriminated against when they were denied the entry-level management positions for which they had each applied;
- ➤ senior management's failure to take appropriate and timely measures to deal with Mr. McKinnon's complaints infringed his right to be free of discrimination in employment in that a "poisoned work environment" was permitted to exist;
- ➤ the Ministry was jointly and severally liable with the personal respondents for discrimination; and
- ➤ the Ministry was vicariously liable for its employees' wrongful conduct and thus jointly and severally liable with the other respondents for harassment.

The Board ordered substantial general and special damages. It also ordered the Ministry to:

- promote the complainant and his wife to the entry-level management positions to which they had applied and were previously denied;
- ➤ relocate the personal respondents, and ensure that they do not work with him again;
- ➤ amend its files and destroy all materials relating to the human rights complaint;
- > publish the Board's decision and order; and
- > establish a training program.

**Status:** The Ministry has substantially complied with the Board's order. The complainant has made further/new allegations of ongoing harassment and reprisal against him by the Ministry, which he has asked the Board to consider. The Board has reserved its decision on whether it can assume immediate jurisdiction to hear these new allegations or whether it will be necessary for the Commission to undertake a full investigation first.

#### AGE

In 1998–99, age accounted for 6% of grounds cited in complaints filed this year. The ground protects the rights of both older and younger persons. 1999 has been designated as the International Year of Older Persons.

#### **COMMISSION CASES**

Donald Andrews and Robert McEllistrum v. London Police Services Board and London Police Association (Board settlement – September 3, 1998)

The complainants alleged discrimination on the basis of age because of the respondents' rule that police officers must retire at age 60. The collective agreement also included this compulsory retirement rule. In a board-mediated settlement, the London Police Services Board and the London Police Association agreed to the following settlement terms:

- ➤ the respondents will change the compulsory retirement age for police officers in the collective agreement from 60 to 65 years;
- ➤ all police officers who would have been required by the collective agreement to retire during 1998, may continue working, subject to the amended collective agreement; and
- ➤ the London Police Services Board will pay the complainants comprehensive general and specific damages.

#### **FAMILY STATUS**

Under the *Code*, family status is defined as the state of being in a parent-child relationship.

In December 1998, the Board of Inquiry made a key decision that identified, among other things, that the use of rent-to-income ratios by landlords has a disparate impact on individuals protected under the *Code* on the ground of family status. The *Kearney* decision is described in detail above in the section dealing with Tenant Protection. Differential treatment based on family status, such as adult-only buildings, also violates the *Code*.

#### **COMMISSION CASES**

John Leonis v. Metropolitan Toronto Condominium Corporations Nos. 741 (Trillium); 742 (Vista); and 634 (Skypark) (Board of Inquiry decision – June 10, 1998)

The complainant, who had a daughter under the age of 16, resided in a building that restricted the use of its recreation facilities for those under 16. The condominium did significantly alter its "Children's Rules" in 1996 and 1997 to allow greater use of the facilities by children.

### Result at Board: The Board of Inquiry held that:

- ➤ "occupancy of accommodation" includes the occupancy of a condominium unit;
- ➤ use of the recreation centre comprises an integral part of the complainant's occupancy of his unit;
- ➤ the centre is not a "recreational club" within the meaning of section 20(3) of the *Code*;
- ➤ the rules in question have a disparate negative impact on parents of young children;
- ➤ allowing children unrestricted access to the centre at all times would cause undue hardship to the respondents, given the impact on other unit owners who use the centre;
- ➤ the children's rules in existence at the time of the complaint were not reasonable and *bona fide* because they did not accommodate the complainant's needs short of undue hardship; and
- ➤ the revised rules adequately accommodate the needs of parents.

# The Board ordered the respondents to:

- > pay the complainant \$500.00 in general damages; and
- ➤ ensure that at least one place on the recreation committee be made available to a unit holder who has a child under 16 years of age.

#### CREED

#### **COMMISSION CASES**

Brendan Henry v. Toronto Honda and Mort Ison (Board settlement – December 2, 1998)

The complainant, a Seventh Day Adventist, alleged that his employer discriminated against him on the basis of creed when he was fired from his job as a mechanic. The complainant alleged that he was let go because he would not work Saturdays. The personal respondent asserted that the lay-off resulted from a shortage of work for mechanics.

The parties agreed to settle the matter. Under the terms of the settlement, the respondent will:

- ➤ pay \$4,000 general damages;
- > pay \$320 damages for lost wages; and
- ➤ make an addendum to its Employee Manual, stating that Toronto Honda will accommodate religious observance requirements.

#### SEXUAL ORIENTATION

1998 was an important year for members of the gay and lesbian community. The Supreme Court of Canada came down in favour of equality rights in the landmark case *Vriend*. Although the case originated in Alberta, the Commission intervened as a member of the Canadian Association of Statutory Human Rights Agencies (CASHRA), along with many other human rights agencies, to establish that the *Canadian Charter of Rights and Freedoms* (*Charter*) should protect people even when laws are silent on human rights, and not just when laws expressly violate human rights.

Also in 1998, two key cases were decided in the Ontario courts, *Rosenberg* and *OPSEU*, both affirming the equality rights of gays and lesbians by including their relationships in the definition of "spouse." In *OPSEU Pension Plan Trust Fund v. Ontario et al.* the court examined the Public Service Pension Plan of the Province of Ontario, and held that ongoing distinctions between the Plan for same sex and opposite sex couples were a violation of section 15 of the *Charter*.

Although the Commission was not a party to the OPSEU case, it has important implications for the Commission. At present the Commission is unable to challenge discriminatory legislation that uses an opposite-sex definition of spouse because the *Human Rights Code* itself contains discriminatory definitions of spouse and marital status. As these decisions work their way up the courts, however, the words of the Supreme Court of Canada in *Vriend* are especially appropriate:

"... groups that have historically been the target of discrimination cannot be expected to wait patiently for the protection of their human dignity and equal rights while governments move toward reform one step at a time. If the infringement of the rights and freedoms of these groups is permitted to persist while governments fail to pursue equality rights diligently then the guarantees of the Charter will be reduced to little more than empty words." 1

Despite these decisions, the Ontario government has not amended the large number of statutes (at least 65) that continue to violate the *Charter* on the ground of sexual orientation. The Attorney General indicated his intention to wait until the release of the Supreme Court of Canada's decision in *M. v. H.* 

# COMMISSION CASES James Lawrence Moffatt v. Kinark Child & Family Services and Harry Oswin (Board of Inquiry decision – December 2, 1998)

The complainant, a gay man, was fired shortly after he became the foster parent of a male youth. He alleged that he was discriminated against because of the respondent's stereotypical views associating homosexuality with pedophilia and because of a perceived handicap (AIDS). The complaint also included the grounds of family status and reprisal.

**Result at Board:** The Board of Inquiry decided in favour of the complainant and made the following findings:

1: (1998) 1 SCR 493

- ➤ Mr. Moffatt was subjected to a poisoned work environment because of rumours and gossip stemming from his sexual orientation;
- ➤ the respondents failed to take adequate steps to investigate and address the complainant's concerns about harassing rumours;
- ➤ this failure constituted an infringement of the complainant's right to be free of discrimination in employment;
- ➤ the evidence did not indicate, however, that the decision to dismiss Mr. Moffatt was motivated by an intention to retaliate against him for having claimed his human rights, nor did the evidence establish that the dismissal was linked to his human rights claim; and
- ➤ reprisal *did* constitute a factor in the 1991 sexual abuse report made by the respondents (The report contained misleading information sent to the Children's Aid Society, in part, because of Mr. Moffatt's human rights claim.).

**Status:** Hearing dates on the issue of remedy have not yet been set.

# Vriend et al. v. Alberta (Supreme Court of Canada decision – April 2, 1998)

The Commission participated in this case at the Supreme Court of Canada in its capacity as a member of the Canadian Association of Statutory Human Rights Agencies (CASHRA), which intervened in support of the appellant, Delwin Vriend.

The case began when Vriend, who worked at King's College in Edmonton, Alberta, was fired shortly after disclosing to his employer that he was a homosexual. The Alberta Human Rights Commission advised Vriend that he could not file a human rights complaint because sexual orientation is not included as a protected ground under Alberta's human rights legislation, the *Individual Rights Protection Act (IRPA)*. Vriend then sought a court declaration that the *IRPA* violates section 15 of the *Charter* by failing to prohibit discrimination on the basis of sexual orientation.

**Result at Court of Queen's Bench:** The lower court agreed with Mr. Vriend and found that Alberta's human rights legislation violated the *Canadian Charter of Rights and Freedoms*. The court effectively held that the Government of Alberta has a *positive obligation* under the *Charter* to legislate protection from discrimination based on sexual orientation, and that therefore such protection should be "read into" the legislation. The Government of Alberta appealed this decision.

**Result at Court of Appeal:** In a two-to-one decision, the Alberta Court of Appeal reversed the lower court and ruled in favour of the government, holding that the omission of sexual orientation as a protected ground did *not* constitute a *Charter* violation. Mr. Vriend appealed to the Supreme Court of Canada, where CASHRA intervened to support his position.

**Result at Supreme Court:** In its April 2, 1998 decision, the Supreme Court of Canada found that the *Charter* applied to omissions in legislation and to the legislature's regulation of private activity. The Court further found that the failure to include sexual orientation as a prohibited ground in the *IRPA* violated the equality rights of gays and lesbians without justification.

#### MARITAL STATUS

In 1998–99, two key issues of interest were in the area of discrimination based on marital status. One was the issue of whether or not same-sex couples could apply for benefits based on their marital status.

The other was whether the protection under the *Code* for marital status extended to couples who faced discrimination based on their association in the relationship as a married partner.

# COMMISSION CASES Attorney General of Ontario v. M. and H. (on appeal to the Supreme Court of Canada)

This case began in the courts and was never the subject of a human rights complaint. The Commission sought involvement as an intervenor because of the important and precedent-setting human rights issues at stake.

Following the breakdown of their 12-year relationship, the respondent "M" asked the court for a support order against "H," her former partner. She argued that the opposite-sex definition of "spouse" in section 29 of the *Family Law Act*, which precluded an application for support in the context of a lesbian common law relationship, denied her the equality rights guaranteed to each individual under section 15 of the *Charter*.

Both the original court and the Court of Appeal ruled in "M's" favour, holding that the *Family Law Act's* definition of "spouse" violated the *Charter*.

"H" appealed to the Supreme Court of Canada, where the Commission successfully applied for leave to intervene, and in its submissions, supported "M's" position. The Commission argued that the opposite-sex definition of "spouse" in the *Family Law Act* is discriminatory and violates principles of equality under section 15 of the *Charter*.

**Status:** This case was argued before the Supreme Court of Canada on March 18, 1998. The decision was still pending as of March 31, 1999.

# OHRC and Mr. A. v. Mr. B., Mr. C. and D. Ltd. (Divisional Court decision – January 19, 1999)

This case calls into question whether the terms "marital status" and "family status" are broad enough to encompass situations where a person is differentially treated because of the *specific identity* of their spouse or child.

**Result at Board:** The Board of Inquiry made a factual finding that the complainant had been fired because of the actions

of his wife and daughter. The Board then held that this was discrimination on the basis of family and marital status.

**Result on appeal:** The Divisional Court did not overturn the Board's finding of fact, but said that differential treatment because of the particular identity of one's spouse or child does not amount to discrimination on the basis of family or marital status.

**Status:** The Commission is considering the legal implications of the Divisional Court decision and may seek leave to appeal further in this case.

#### SEX AND GENDER IDENTITY

Last year the Commission made a public commitment to develop a policy position on the rights of transgendered individuals. This year, the Commission began research and consultation with community groups and individuals in the transgendered community. At present, the *Code* does not explicitly include gender identity as a protected ground of discrimination.

The following points summarize results of the Commission's research and consultation to date:

- ➤ the transgendered community is profoundly marginalized and experiences significant social stigma;
- ➤ these factors, as well as high levels of discrimination in employment and services and social stereotyping make a progressive understanding of gender identity both timely and compelling;
- ➤ Ontario's existing legal structure can support a progressive understanding of the *Code* to protect transgendered persons effectively. There is a close relationship between sex discrimination and gender discrimination specifically, discrimination based on gender characteristics or stereotypes that are different from a person's birth-assigned gender; and
- ➤ the Commission will continue to accept complaints related to gender identity under the ground of sex.

Consultation will continue to further develop policies and practices relevant to issues of discrimination based on gender identity.

#### SEXUAL HARASSMENT

Following the tragic death of Theresa Vince at the hands of her manager in 1997, a coroner's jury made a number of recommendations on the issue of sexual harassment. These recommendations included several to the Ontario Human Rights Commission, all of which were accepted by the Commission and acted upon.

As part of these initiatives, the Commission also launched a public awareness campaign in 1998 to promote awareness of the issue.



As a result of the Vince Inquiry, Commission staff introduced a new procedure to help victims of sexual harassment identify potential situations of violence and refer them to appropriate community services including the police. In May 1998, staff began to ask callers whether they felt that their personal safety was at risk. Of the 460 sexual harassment-related calls that were received from this period onwards, 107 (23%) indicated a perceived threat, 45 (10%) indicated that police were called, and 62

(13%) indicated that a referral was desirable. In such cases, the Commission can refer callers to a number of regional and local resources and contacts for assistance.

#### COMMISSION CASES

Ena Drummond v. Tempo Paint and Varnish Co. (Division of Tower Chemicals Limited), Bernard Jakobson and Hugh Kerr (Board of Inquiry decision – June 18, 1998)

The corporate respondent employed the complainant as a labeller and box-maker. The complainant alleged that from December 1988 to the end of her employment, she was subjected to harassment, sexual solicitation and discrimination on the basis of

sex by two of the respondent's employees. The complainant's employment was terminated on September 19, 1989.

**Result at Board:** The Board found that the complainant's allegations were well founded. The Board held that:

- ➤ the corporate respondent, through the inaction of its management, infringed the complainant's rights under the *Code* to freedom from harassment and from discrimination in employment;
- ➤ the harassing employees knew that their ongoing conduct was not welcomed by the complainant and was the cause of significant distress on her part;
- ➤ management's complete failure to address the harassment allegations perpetuated a hostile work environment for the complainant and led, predictably, to her dismissal; and
- ➤ the company is jointly and severally liable with the personal respondents for losses arising out of the infringement.

In a separate decision on damages, dated January 6, 1999, the Board ordered the respondent to:

- ➤ pay the complainant \$5,000 in special damages and \$10,000 in general damages;
- > pay both prejudgement and post-judgement interest to the complainant;
- ➤ post notices in all of its workplaces setting out its rights and responsibilities under the *Code*; and
- ➤ develop and implement an internal human rights complaint procedure for its employees, to be approved by the Commission within six months of the order.

#### PREGNANCY

In the area of human rights, women are often adversely affected in areas such as employment because of pregnancy. As part of its mandate to promote awareness, the Commission developed a plain language version of the Commission's *Policy on Pregnancy*. The document focuses on women's rights at the work-

place while they are pregnant and after delivery, and also addresses a woman's right to breast-feed her child. Both publications are scheduled for release in the summer of 1999.

# COMMISSION CASES Solange Lavendar v. 944369 Ontario Limited and John Polizogopoulos (Board of Inquiry decision – September 1, 1998)

The complainant was employed as a waiter of the respondent's restaurant. After a complicated pregnancy and miscarriage, the complainant requested and received time off from her employer. When she contacted her supervisor and the personal respondent to arrange for her return, neither returned her phone calls. She was later informed that her position had not been held for her.

# **Result at Board:** The Board found that the respondents:

- ➤ would not have terminated the complainant but for the circumstance of her asking for time off due to pregnancy; and
- ➤ violated the *Human Rights Code* when they terminated the complainant.

## The Board ordered the respondents to:

- ➤ pay \$3,500 in general damages;
- ➤ pay \$4,896.68 in lost wages plus prejudgement interest to the complainant; and
- ➤ post notices declaring the organization's commitment to human rights prominently in their business establishment.

# Connie Wight v. Office of the Legislative Assembly (Board of Inquiry decision – July 13, 1998)

The complainant experienced a high risk pregnancy and, as a result, delivered her baby before she had completed the one-year minimum service requirement that would have made her eligible for paid maternity leave. She was dismissed for refusing to return to work when ordered until she had secured adequate day care for her children. She was also denied short-term sickness benefits, maternity leave and extended leave.

The complainant alleged that her right to equal treatment in employment without discrimination had been infringed in contravention of the *Code*. She alleged she could have and should have been accommodated by the respondent. She also alleged that the respondent's decision to extend her probationary period by six months because she had been off for an extended period due to her pregnancy was discriminatory.

#### Result at Board: The Board found that:

- ➤ the respondent's sick leave provisions were applied unequally to women in that they were available to all employees after twenty days of service except pregnant women, and they were not available for pregnancy-related illness; and
- ➤ the respondent's usual practice in such circumstances was to extend the probationary period by the length of the absence. The only reason for extending the probationary period was the complainant's pregnancy. Therefore, the Board found that the extension of the probationary period was discriminatory.

The Board dismissed the remaining allegations. In compensation for the discriminatory extension of her probationary period and denial of sick leave benefits, the Board awarded the complainant \$1,000 in general damages. The Commission has appealed the Board's decision to the Divisional Court.

**Status:** A hearing date for the appeal has yet to be set.

## **Procedural Issues**

#### DAMAGES

The purpose of human rights legislation is not to find fault but to eliminate discrimination and to provide redress. It is meant to be preventative and remedial, not punitive.

A remedy to a complaint might include restoring the complainant to a position the individual would have held had the *Code* not been violated. It may also consist of compensation for loss of earnings or job opportunities, or damages for mental anguish suffered as a result of the violation.

An important component of this principle is the Board of Inquiry's power to award damages and interest. This power was challenged in two appeal cases this year, and the Commission was successful in both.

# COMMISSION CASES OHRC and Geiger v. London Monenco (Geiger/Barboutsis) (Divisional Court decision – October 6, 1998)

The complainants worked for the company at a remote site approximately 200 km north of Thunder Bay. Under company policy, married staff were flown home at the company's expense every three weeks. Unmarried staff did not qualify for this benefit, and had to fly home at their own expense. At the hearing, the complainants testified that their inability to return home more frequently caused them to suffer loneliness, boredom and isolation which, in the case of one complainant, led to a need for medical help.

**Result at Board:** The Board of Inquiry ruled in favour of the complainants and awarded prejudgement interest at a rate of 10%. This rate approximated the average interest rate contemplated by the *Courts of Justice Act* for the period commencing August 1, 1984. The Board noted that prejudgement interest was payable only on the damages for out-of-pocket expenses and for the value of the benefit not received.

The respondents appealed the power of the Board of Inquiry to award interest under section 41(1)(b) of the *Code* 

and, in the alternative, argued that they should not be required to pay prejudgement interest to cover expenses, which were never incurred.

**Result at Divisional Court:** The Divisional Court dismissed the appeal. Stating that it was bound by the Court of Appeal decision in *OHRC v. Impact Interiors*, the Divisional Court found that:

- ➤ the Board had jurisdiction to award prejudgement interests and that the \$10,000 cap in section 41(1)(b) applied only to damages for mental anguish;
- ➤ the value of the trips not taken represented an improper diminution of salary; and
- ➤ the loss arising out of the infringement should attract prejudgement interest, as it was the equivalent of money owed and not received.

# Shirley Hom and Cindy Petersen v. Impact Interiors Inc. and Ken Walia (Court of Appeal decision – July 13, 1998)

The complainants alleged discrimination on the basis of sexual harassment and were successful before the Board. The respondents appealed to the Divisional Court.

**Result at Divisional Court:** The Court upheld the findings with respect to discrimination, but held that the Board assessed special damages for one of the complainants at a disproportionately high rate, and erred in ordering prejudgement interest on the damages awarded. The Commission was granted leave to appeal to the Court of Appeal on the damages issues.

Result at the Court of Appeal: The Court of Appeal found that the Divisional Court erred in interfering with the Board's award of interest and the quantum of damages. In particular the Court disagreed with the Divisional Court's statement "... there must ... be some consequence between the com-

pensation for lost wages and the duration and quality of the complainant's employment."

#### INTERPRETING COMMISSION DISCRETION

Section 34 of the *Code* gives the Commission discretion not to deal with certain complaints if:

- ➤ there is another law in Ontario which would better deal with the matter;
- ➤ the complaint is trivial, frivolous, vexatious or made in bad faith;
- ➤ the matter is outside the Commission's authority or jurisdiction; or
- ➤ the complainant has waited more than 6 months after the last incident on which the complaint is based to file the complaint.

The number of cases not dealt with under section 34 fluctuates from year to year. In 1997–98, 21% of cases fell into this category. In 1998–99, 8.1% of the total cases resolved by the Commission were as a result of decisions not to deal with the matter under section 34.

Parties to a complaint may apply to the Divisional Court for judicial review of certain Commission decisions, such as whether to:

- ➤ deal with a complaint (section 34);
- ➤ refer the subject matter of a complaint to a Board of Inquiry (section 36); or
- ➤ change an original Commission decision under either section 34 or 36 upon reconsideration (section 37).

Court rulings on these applications help to clarify the scope of the Commission's discretionary powers, and generally, either endorse or reverse the Commission on its handling of complaints. The cases outlined below explain rulings made in response to applications for judicial review during the last year.

#### **COMMISSION CASES**

Mrs. Joan Burman on behalf of her daughter Riley Burman v. OHRC (Divisional Court decision – November 26, 1998)

The applicant asked the Court to quash the Commission's decision not to deal with her complaint against the Carleton Board of Education. The Commission had decided not to deal with the complaint pursuant to section 34(1)(a), on the basis that the matters raised in the complaint could more appropriately be dealt with under the *Education Act*.

**Result on judicial review:** The Divisional Court unanimously held that the application should be dismissed. However, there was a difference of opinion on the interpretation of section 34(1)(a).

Two judges held that section 34(1)(a) suggests a one-step determination in the exercise of the Commission's discretion as to whether the complaint could or should be more appropriately dealt with under another Act. The Court held that the Commission's exercise of that discretion was not patently unreasonable.

The third judge held that the section requires the Commission to undertake a two-step process which, in fact, it did undertake in this case:

- ➤ the Commission must first decide whether it appears that the complaint is one that could or should be dealt with under another Act a decision within the Commission's expertise; and
- ➤ having made that determination, the *Code* gives the Commission discretion to hear or not to hear the complaint.

**Status:** The applicants have applied for leave to appeal.

# Leslie Devlen v. OHRC (on appeal to the Court of Appeal)

The complainant worked for the Liquor Control Board of Ontario (LCBO) as an investigator. Some years prior to

her employment, she sustained a head injury, which she alleged had an ongoing effect on her cognitive abilities and her memory. She was fired from her job at the LCBO while on a sick leave. The Commission decided that it would not deal with the case on the basis that (a) the complainant did not have a handicap, and (b) the complaint was trivial. This decision was upheld on reconsideration.

**Result on judicial review:** The Divisional Court focussed on the standard of review, which it said was "patent unreasonableness." Applying that standard, the Court held that neither the section 34 nor the section 37 decisions were patently unreasonable.

The LCBO submitted that the standard of review for an administrative body exercising a discretionary power is whether the decision was made (i) in good faith, (ii) upon relevant considerations, and (iii) in accordance with procedural fairness. The Court noted that this test had also been met. The Divisional Court dismissed the judicial review, with costs of \$4,000 to the LCBO.

**Status:** The Divisional Court decision is currently under appeal to the Court of Appeal.

# Mercy Anselm v. OHRC, Minister of Citizenship (Divisional Court decision – June 18, 1998)

The Commission exercised its jurisdiction under section 36 of the *Code* and decided not to refer the subject matter of this complaint to a Board of Inquiry. The complainant challenged this decision.

**Result on judicial review:** The Divisional Court held that the Commission's discretion under section 36 is very broad and the Commission has a duty to act fairly in exercising this discretion. The Court was not persuaded that the Commission had acted unfairly. Furthermore, the Court ruled that it is for the Commission to decide whether the evidence justifies an inquiry into issues of credibility, and the Court had no jurisdiction to substitute its decision for that of the Commission.

# Service to the Public

The Commission continues to move toward its goal of a current caseload – one in which the agency completely resolves all complaints within an average of 12 months from the date of filing. This success is due to current trends of early resolution coupled with effective strategies to reduce the number of cases under investigation.

Despite this success, there are still several challenges. The average age of cases that are resolved continues to be high because the Commission is focusing on resolving older cases. For this reason, the average age of complaints that were resolved, was 22 months on March 31, 1999. The average age of cases is determined by totalling the ages of all cases and then dividing this sum by the total number of cases.

The Commission also uses *median age* as a measure. The *median* is the midpoint in the distribution of cases, and is the point above and below which fall exactly 50% of the complaints. The median age of resolution for cases filed as of March 31, 1999, was 18.5 months.

Last year, the Commission's goal was to decrease the average age of cases in the caseload to 14 months. As of March 31, 1999, the average age of cases in the caseload was 16.2 months, and the median age of cases was under the 12-month mark.

# INQUIRIES AND FILING COMPLAINTS

The Inquiry and Intake Service Unit is the hub for the Commission's first contact with the public. Since 90% of the public's first contact with the Commission is by telephone, a centralized call centre for one-window access now provides prompt service in English and in French for callers across the province. TTY service is also available.

During the past year, the Commission's call centre handled over 199,000 calls. A certain number of callers opted for the automated message, which provides basic information on how to contact the Commission, how to file a complaint and other information about the human rights process. Another

40,112 callers stayed on the line and were connected with inquiry service representatives. On average, the waiting time for these callers was 65 seconds.

The appropriate staff person answered the questions of the callers who reached a representative or referred the call to another level of government or to another agency. Inquiry service representatives sent out intake forms (preliminary complaint forms) for 4,155 of the 40,112 calls that they handled (10%).

In 1998–99, the intake office received 2,246 intake packages. Of these, 1,850 or 82% became human rights complaints.

## **MEDIATION AND SECTION 34 REQUESTS**

#### Mediation

The Commission's professionally trained mediators provide services throughout the province. Mediation provides parties with an opportunity to resolve complaints early on in the process on a strictly voluntary basis.

Parties to a human rights complaint may choose to try mediation at the time a complaint is filed, unless the Commission believes that the complaint should not be mediated for public interest reasons.

As noted above, there were 1,850 complaints opened at the Commission in the 1998–99 fiscal year. Of this number, 1,537 complaints were inputted to the Commission's mediation and section 34 processing stage. By the end of the fiscal year, 1,065 or 69% of cases had been completed. A total of 472 cases (31%) were moved into the investigation stage.

For the 1,065 cases that were closed in the mediation and section 34 stage, the median age at resolution was six months. In total, settlements accounted for 54% of all resolutions achieved in the mediation and section 34 stage.

#### Section 34

Section 34 of the *Code* gives the Commission discretion not to deal with certain complaints.

In 1998–99, 8.1% of cases were not dealt with as a result of section 34 decisions. Most of these decisions occurred at the beginning of the complaint process. In cases where the Commissioners decided to "deal with" the matter, complaints were referred back for mediation or investigation.

#### INVESTIGATION

An investigation begins when:

- ➤ the Commission decides under section 34 to deal with the case;
- > the parties do not agree to mediation; or
- > mediation fails.

In the 1998–99 fiscal year, the Commission reduced its investigation caseload volume by approximately 36%. During the year, 472 additional cases became assigned to the investigation stream (either as the result of failed mediations or as the result of not pursuing the mediation option), while 1,153 cases were closed at the investigation stage.



Total Number of Cases at Investigation

# Improvement in Investigation Timeliness

MAR 99 The success of the mediation process has had an important effect on the investigation caseload: it has meant that a substantial number of cases are now resolved up front and early in the process.

On March 31, 1998, 1,780 cases were at the investigation stage. This was about 60% of the Commission's caseload. By September 30, 1998, this had been reduced to 1,470 cases (55% of the caseload). By March 31, 1999, this segment contained 1,140 cases or 48% of the caseload. Importantly, as the investigation caseload has decreased, so too, has the median age of the overall caseload inventory.

With a resulting reduced investigation caseload, the Commission has been able to devote its resources to investigating older cases. Particular efforts were made this year to resolve the 387 cases that were three years of age or older.

Although 109 of these cases were still open on March 31, 1999, all are being actively investigated and are scheduled to be resolved early during the 1999–2000 fiscal year. The Commission aims not only to fulfill its commitment on these three year-old cases but to ensure that similar measures are taken to address the number of cases that are now two years old, before they reach three years of age.

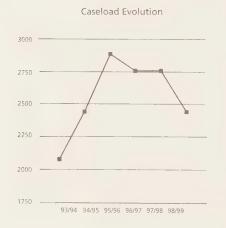
### The Caseload Picture

For the third year in a row, the Commission has resolved more complaints than it opened. This is despite a 35% increase in new complaints compared to last year. At the end of March 1999, our caseload stood at 2,386 complaints.

Looking at the average age of cases when they are resolved has been the usual way to assess timeliness. The age of

the average case at resolution provides a rough forecast of the expected timelines for processing cases.

In the short term, however, the Commission's strategy of focusing on older cases is pushing up the average age of cases at resolution. The age at resolution will continue to be high throughout the course of 1999–2000 as the Commission continues its strategy of resolving older cases. In the longer term, this indicator will show much lower values when this initiative has been successfully completed. The average age of cases (determined by totalling the ages of all cases and then dividing this sum by the total number of cases) at resolution on March 31, 1999, was 22 months.



#### The Countdown to a Current Caseload

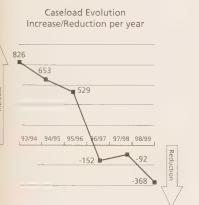
At present, another measure of the progress made is given by the median age of the caseload. The 'median' is the midpoint in the distribution of cases, and is the point above and below which fall exactly 50% of the complaints. In situations where the case distribution ranges between older and very new cases, the median presents a better picture of the Commission's caseload.

The median age has been decreasing steadily since we started tracking cases this way and demonstrates the progress made. The median age of the caseload at present is under 12 months.

A key commitment made to the Ontario public when the organizational changes were made has been the goal of a "current caseload." The objective is to achieve an average age of 12 months for complaints resolved. Based on current trends, this goal is within reach.

#### Conclusion

The Commission has made the following significant strides toward improving the timeliness of its case processing:



- ➤ the Commission's caseload is steadily decreasing and the speed of the decline is increasing;
- ➤ there is an important shift occurring within the caseload due to the success of the new service delivery model, mediation services, where larger volumes of cases are being resolved earlier and up front; and
- ➤ the caseload is declining, making it more manageable and enabling the Commission to address the older cases.

While the Commission still has to achieve its objectives for those cases that

are over three years old, mediation targets are being met and the Commission is moving forward in the direction that it has charted.

# Education Initiatives in our Community

Education is an integral part of the Commission's mandate. An informed public is the best guarantee of equality.

In 1997, the Commission introduced a strategy to revitalize its education and information activities and 1998–99 has been one of the most active years in Commission history. Commissioners and Commission staff personally delivered education and training to over 4,500 people this year, up from 3,000 in 1997–98, and 1,800 in 1996–97.

Staff members, the Chief Commissioner and Commissioners visit schools and a variety of workplaces, ranging from private companies to major public institutions, to explain how the *Code* works. The Commission also maintains contact with other human rights agencies, governmental and non-governmental to discuss, advise and consult on human rights issues.

Due to the high proportion of race-related complaints (27% this year), the Commission has enhanced its outreach and work with a number of community-based and anti-racist groups and organizations. These include the Council of Agencies Serving South Asians, the Town of Ajax Race Relations Advisory Committee, the Peel Multicultural Council, and the Tamil Anti-Racism Committee.

1998 was the 50th anniversary of the Universal Declaration of Human Rights. To celebrate the year, the Commission launched *Human Rights: Policies and Practice in Ontario*, a publication with an up-to-date collection of new and revised policy statements and guidelines. Hundreds of community advocacy and business groups in Ontario and across Canada requested the book. A revised version is planned for this fiscal year.

## **HUMAN RIGHTS AND EMPLOYMENT**

Employment generates the most complaints at the Commission, accounting for three-quarters of all complaints filed. With the many changes occurring in the workplace in recent years, this is an ongoing focus for the Commission. Personal characteristics such as gender and age are important factors in labour market adjustments and these have human rights implications. Both



employers and unions are key players in the Commission's educational strategy.

This year, the Commission:

> developed strategic partnerships for education and outreach with unions, employers and employers' associations, including the Human Resources Professionals Association of Ontario:

➤ conducted 30 public education events with the private and public sector employers and unions, with a special focus on sexual harassment in the workplace; and

➤ provided information and assistance to over 1,000 employers and organizations, including policy advice on how to develop in-house anti-discrimination policies and practices.

The Commission has also developed a new comprehensive publication, *Human Rights in the Workplace*, which will be released in the 1999–2000 fiscal year. The document specifically targets the employment sector, from which arise over 70% of complaints to the Commission, and gives a complete, plain language presentation of policies and guidelines on human rights.

# **Aboriginal Communities**

Last year, the Commission indicated its commitment to enhance its work with Aboriginal people. This year, the Commission began its outreach work with a focus on human rights in the workplace. For example, the Commission initiated workplace training initiatives with Miziwe Biik, the Native Women's Resource Centre and the Native Friendship Centre in Fort Frances.

#### Sexual Harassment

In response to the Recommendations of the Coroner's Inquest into the Deaths of Russell Davis and Theresa Vince, the Commission launched a public awareness advertising campaign, using Ontario's 18 municipal transit systems to post the message "Sexual Harassment: It's never okay. It's against the law."



The campaign was conducted in partnership with the Ontario Women's Directorate, the Human Resources Professionals Association of Ontario and the Canadian Human Rights Commission. The first campaign was conducted in May 1998. A second one is planned for the spring of 1999.

The Commission also:

- ➤ distributed 15,000 posters and support material on sexual harassment to human resources professionals, community groups and agencies throughout the province for circulation in workplace environments; and
- ➤ conducted 14 conferences, seminars and workshops on sexual harassment.

The Chief Commissioner spoke at a provincial conference held in London in November 1998. In his remarks, the Chief outlined the Commission's role in trying to eliminate sexual harassment and dispelled some common myths associated with this issue. He noted that sexual harassment — based on dynamics of power and control — can *never* be considered acceptable and *always* causes harm.

#### NATIONAL AND INTERNATIONAL LIAISON

In 1998–99, the Commission met with a number of visiting delegates from Japan, New Zealand, and the Northern Ireland Human Rights Commission. The Commission also received non-governmental organization (NGO) representatives from Greece, Burma, and South Africa, as well as a representative from Japan researching the UN's recommendation to the Japanese Government that it establish an independent mechanism for investigating complaints of human rights violations.

The Commission also prepared comments in response to questions around Canada's Fourth Report from the UN Committee on Economic, Social and Cultural Rights, as well as those from the Committee for the Elimination of Discrimination against Women.

Nationally, the Commission had the opportunity to meet with representatives of the Alberta and Nova Scotia Human Rights Commissions, and hosted a meeting of legal directors from other human rights commissions. Commission staff also attended the Canadian Association of Statutory Human Rights Agencies' annual conference in Halifax, Nova Scotia.

# **Operations**

#### **TECHNOLOGY**

In 1998–99, the Commission's focus was to achieve greater efficiency in the administration of its case management. Over the year, it continued to invest in the development of its Case Management Information System (CMIS). The Commission received an Amethyst Award for the development of this computer software application. The system supports both of the Commission's primary goals – to respect the *Code* and promote and advance its work in the area of human rights.

#### TRAINING

The Commission delivered corporate training programs for staff throughout the fiscal year. The key programs delivered were:

- ➤ advanced mediation training;
- > performance management training for management staff;
- ➤ investigation training (new employees);
- ➤ Code of Ethics; and
- ➤ barriers faced by persons with disabilities (two-day comprehensive seminar for all staff).

#### PERFORMANCE MANAGEMENT

The Commission introduced a new performance management system in 1998–99, which requires early identification of individual performance objectives for all staff in the organization. In addition, two in-year progress reviews are now required, and a final evaluation at year-end. This performance framework is directly tied to the Commission's corporate objectives and will assist us in meeting annual performance commitments.

#### QUALITY SERVICE FRAMEWORK

With help from independent consultants, the Commission has begun work on the development of a framework for a comprehensive quality service program. This framework outlines preliminary quality objectives for all aspects of the Commission's operations. The Commission will further consult with staff to develop more detailed standards and measures and provide orientation on the standards in 1999–2000.

#### ACCOUNTABILITY FRAMEWORK

The Commission has presented an accountability framework in the last two annual reports (1997-98, 1998-99). The framework is designed to establish targets for the organization's performance in the coming year as well as report on achievements against previously established targets.

The following is a summary of achievements against targets in 1998-99 and the Commission's public commitments for the 1999-2000 fiscal year.

| SERVICE AREA                       | 1998-99<br>COMMITMENT  | 1998-99<br>ACHIEVEMENT  | 1999-2000<br>COMMITMENT                                   |
|------------------------------------|--|---|---|
| Public education and communication | ➤ Public awareness<br>campaign on sexual<br>harassment   | ➤ First campaign was successful   | ➤ Second campaign to be conducted in the spring of 1999   |
|                                    | ➤ Plain language documents   | ➤ New documents include<br>Pregnancy, A Guide to<br>the Code  |   |
|                                    | ➤ Additional partnerships<br>with aboriginal organiza-<br>tions and the private,<br>public and not-for-profit<br>sectors | ➤ The Commission has initiated workplace-training initiatives with Miziwe Biik, the Native Women's Resource Centre and the Native Friendship Centre in Fort Frances   | ➤ Increase liaison activities with aboriginal communities |
|                                    | ➤ Improve international liaison  | ➤ Met with a number of international delegates. ➤ The Commission also prepared comments in response to the Report from the UN Committee on Economic, Social and Cultural Rights as well as those from the Committee for the Elimination of Discrimination against Women | ➤ Maintain international liaison activities               |
|                                    | ➤ Improve distribution of<br>Commission publications   | ➤ Distribution of OHRC's policies to 10,000 human resources professionals, individuals and community groups   | ➤ Maintain distribution of policies on discrimination     |
|                                    | ➤ Maintain level of direct<br>delivery of public<br>education  | ➤ Number of people<br>reached through public<br>education increased<br>by 30%   | ➤ Maintain 1998-1999<br>levels                            |
|                                    | ➤ Modify the Web site<br>to provide access to<br>information/publications  | ➤ Daily user sessions on<br>the Web site increased<br>from 123 to 217   | ➤ Increase in the number of hits on the Web site by 10%   |

| SERVICE AREA<br>(cont'd) | 1998-99<br>COMMITMENT<br>(cont'd)  | 1998-99<br>ACHIEVEMENT<br>(cont'd)  | 1999-2000<br>COMMITMENT<br>(cont'd)   |  |  |
|--------------------------|--|---|---|--|--|
| Policy                   | ➤ Re-direct policy<br>resources to support<br>case management  | > 25% of resources used in<br>support of case manage-<br>ment   |   |  |  |
|                          | ➤ Update research tools on disability  | ➤ Consultation paper on disability developed  |   |  |  |
|                          | ➤ Develop a policy position on transgendered persons and the <i>Code</i>                             | ➤ Discussion paper on gender identity developed   | ➤ Develop a policy position on age, on sexual orientation   |  |  |
|                          | ➤ Review legislation and<br>bills tabled before the<br>legislature for compli-<br>ance with the Code |   |   |  |  |
| Inquiry Services         | ➤ Maintain service levels  | ➤ Inquiry services handled 199,083 calls  | ➤ The average response time on calls handled by   |  |  |
|                          |  | ➤ A total of 40,112 callers<br>spoke with an Inquiry<br>Service Representative                          | an Inquiry Service<br>Representative will be<br>under 60 seconds                                    |  |  |
|                          |  | The average response<br>time was 65 seconds as<br>compared to 66 seconds<br>for the 1997-98 fiscal year |   |  |  |
| Intake Services          | ➤ Maintain service levels  | ➤ Intake services received<br>2,246 intake packages<br>for processing in<br>1998-99                     | ➤ Maintain processing<br>times for drafting of<br>complaints  |  |  |
|                          |  | ➤ Drafting of complaints is<br>completed within 15<br>days of receiving an<br>intake package            |   |  |  |
| Mediation Services       | ➤ Maintain at least a 50% settlement rate for cases that go through the mediation process            | ➤ The settlement rate for cases proceeding through mediation was 74% for the fiscal year                | ➤ Achieve at least a 65% settlement rate for cases proceeding through mediation                     |  |  |
|                          | ➤ Complete an evaluation of the mediation program  | ➤ The first evaluation report has been completed  | ➤ Resolve 1,100 cases with 16 staff through the early processing stages of mediation and Section 34 |  |  |

#### OPERATIONS

| SERVICE AREA<br>(cont'd) | 1998-99<br>COMMITMENT<br>(cont'd)  | 1998-99<br>ACHIEVEMENT<br>(cont'd)   | 1999-2000<br>COMMITMENT<br>(cont'd)   |
|--------------------------|--|--|---|
| Investigation Services   | ➤ Resolve 95% of cases<br>over 3 years of age as of<br>March 31, 1998  | ➤ 73% of cases over<br>3 years of age were<br>resolved in 1998-99.   | ➤ Resolve 80% of cases<br>over 2 years of age as of<br>March 31, 1999   |
|                          |  | An additional 10% were completed in this period.   | ➤ Resolve 1,100 cases through the investigative process with 31 staff.  |
|                          | ➤ Decrease the average age<br>of the caseload to 14<br>months  | ➤ The average age of the caseload as of March 31, 1999 was 16.2 months (The median age of the caseload was 10.5 months).                         | ➤ Reduce the median age of the caseload to under 10 months.   |
| Corporate Initiatives    | ➤ Quality Assurance<br>Program developed   | ➤ Quality Service<br>Framework developed.<br>Detailed service standards<br>are being developed.  | ➤ Quality service standards introduced in September 1999.   |
|                          | ➤ Enhanced Case<br>Management<br>Information System  | ➤ Case Management<br>System was further<br>developed as per defined<br>business requirements.  | ➤ Training programs to be provided on public education, mediation, sexual harassment cases and quality service.   |
|                          | ➤ Training in mediation,<br>systemic investigation,<br>public education, Code<br>of Ethics, Quality<br>Assurance and Sensitivity<br>to persons with special<br>needs | ➤ Training was completed<br>on Mediation, public<br>education delivery, Code<br>of Ethics and barriers<br>faced by persons with<br>disabilities. | ➤ Complete review of accessibility of Commission services and employment practices for persons with disabilities. |

# Appendices

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# Commissioners

KEITH C. NORTON, Q.C., B.A., LL.B. Chief Commissioner



Keith Norton was appointed Chief Commissioner of the Ontario Human Rights Commission on July 18, 1996. He is an educator and a lawyer by training, having studied law at Queen's University in Kingston, as well as having received a diploma in education from the Ontario College of Education. He practiced criminal and family law in Kingston, Ontario, and taught at the secondary and post-secondary levels.

Mr. Norton is a former Minister of Community and Social Services and served as Parliamentary Assistant to the Treasurer of Ontario and Minister of Economics and Intergovernmental Affairs. He has also served as Minister of Health, Minister of Education and Minister of Colleges and Universities.

As Minister of the Environment between 1981 and 1983, Mr. Norton became the first Canadian cabinet minister to be invited to testify before a Committee of the United States Senate. Throughout his career, Mr. Norton has championed issues related to persons with disabilities, senior citizens and the disadvantaged. He has also been involved in a number of business ventures.

Mr. Norton is a former President of the Canadian Human Rights Tribunal.

#### CHERYL BLONDELL



Cheryl Blondell was appointed to the Commission in February 1997. She is an Assistant Crown Attorney in the Ministry of the Attorney General. She formerly served as Criminal Duty Counsel with the Ontario Legal Aid Plan, where she advised and represented accused persons. Ms. Blondell worked for the Commission in the summer of 1989 as part of the team that created the Systemic Investigations Unit.

#### THE REV. FR. WILLIAM G. CLIFF



Fr. Cliff was appointed to the Commission in February 1997. He is the Rector of St. John the Evangelist Church in Strathroy in the Diocese of Huron. He is a former member of the University of Western Ontario Senate, a Padre with the Royal Canadian Legion and a member of the Anglican Roman Relations Committee of the Diocese of Huron. A former Chaplain Intern at St. Joseph's Health Centre, London, he was trained at King's College and Huron College at the University of Western Ontario and has served congregations in London, Simcoe, Hanover and Durham, Ontario.

#### MITRA S. MANESH



Mitra S. Manesh was appointed to the Commission in February 1997. She is the Executive Director of the Peel Multicultural Council, co-chair of the Ministry of Citizenship, Culture and Recreation's Policy Advisory Council, member of the Trillium Foundation Review Committee and past member of the Board of Directors of the Ontario Council of Agencies Serving Immigrants. Ms. Manesh is also past chair of the Peel Committee Against Woman Abuse.

#### RICHARD MILES



Before his appointment to the Commission in July 1992, Richard Miles held senior administrative positions with the Ministry of Community and Social Services, the Federal Secretariat for Disabled Persons Office, and the Handicapped Action Group Incorporated in Thunder Bay. Mr. Miles was appointed by the Minister of Citizenship, Culture & Recreation to the task force, which conducted a procedural review of the Ontario Human Rights Commission.

#### MARNIE PAIKIN, CM



Marnie Paikin was appointed to the Commission in September 1996. She is a past President of the Canadian Council of Christians and Jews, and a recipient of the Province of Ontario's "Outstanding Woman Award" and of the Human Relations Award of the Canadian Council of Christians and Jews. She has been inducted into the Hamilton Gallery of Distinction and has been appointed a Member of the Order of Canada. Ms. Paikin is currently a Director of Atomic Energy of Canada Ltd. and of Westcoast Energy Inc.

PETER LI



Peter Li is the General Manager of Ming Pao Daily News, Eastern Edition. He is a member of the Chinese Canadian Development Committee of the Hospital for Sick Children Foundation and sits on the Asian Business Committee of Metro Toronto and York Region's Junior Achievement. Mr. Li was a member of Canada Trust's Asian Advisory Council. He has also served as a Director of the Chinese Information and Community Services and was a past Vice-President of the Chinese Canadian Advertising, Media and Marketing Association. Mr. Li is a former General Manager of Hotel Victoria and Project Administrator of the Chinatown Centre. Mr. Li was appointed to the Commission in September 1997.

#### NALIN KANUCK



Nalin Kanuck was appointed to the Commission in September 1997. He is a Management and Financial Consultant. He is also an advisor on Race Relations to the York Region Board of Education. Mr. Kanuck is a former Justice of the Peace in Sri Lanka, a position that required him, among other judicial functions, to investigate human rights violations. He was also Chairman and Managing Director of the Regional Development Board in the Ministry of Regional Development in Sri Lanka. He also functioned as a Director of the National Youth Service Council in Sri Lanka's Prime Minister's Office. Mr. Kanuck has a Bachelor of Arts Degree from the University of Ceylon and an

Executive Diploma in Public Administration from the University of Colombo, Sri Lanka. The City University of California also awarded him an Honorary Doctorate Degree in Public Administration. He is a graduate of the Canadian Institute of Certified Administrative Managers and a Fellow of the British Institute of Management, England.

#### MICHEL LALONDE



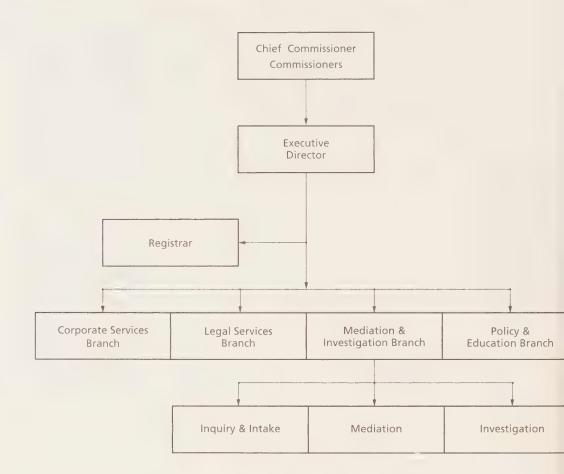
Michel Lalonde is Reeve of the East Hawkesbury municipal council, having served over the last 20 years as Councillor and as Deputy Reeve. In 1993, Mr. Lalonde served as Warden of the Council for the United Counties of Prescott and Russell. He was subsequently elected to the Council's executive, planning and public works committees. He received the Award of Merit for the County of Prescott for the year 1985 and also served as President of the Prescott Mutual Insurance Board and of the Hawkesbury and District General Hospital Board. A farmer by occupation, Mr. Lalonde is an active participant in the local farming community. He served from 1989 to 1996 on the board of directors of the Glengarry, Prescott and Russell Local Agricultural Employment Board and as President of the Prescott Peer Review Committee for Environmental Farm Plan from 1993 to 1997. He was appointed to the Commission in December 1997.

#### CLAUDETTE ROBINSON



Claudette Robinson was appointed to the Commission in March 1998. She studied at the University of Ottawa and McMaster University. Ms. Robinson is the French Coordinator at Sheridan College and a language consultant for corporate clients. She has co-authored a series of French readers for elementary and secondary schools. She was the author and co-author of three national French television series for TVO educational programs one of which she hosted. She has been a consultant for the Halton Board of Education, has taught at the University of Ottawa summer school and has been Principal of the Teaching French as a Second Language course for the Ministry of Education.

# **Organizational Chart**



## **Branch Descriptions**

#### Office of the Chief Commissioner

The Chief Commissioner provides leadership and guides the Commission in carrying out its statutory functions in a way that ensures that, at both the government and community levels, human rights are protected in the province.

The Chief Commissioner and Commissioners set policy direction and make decisions about complaints relating to the *Code*.

#### Office of the Executive Director

The Executive Director provides leadership and direction to senior management staff of the Commission in carrying out its statutory mandate; directs the development and implementation of corporate and operational plans; and leads the planning and implementation of ongoing organizational improvement initiatives within the Commission. The Registrar's Office, attached to the Office of the Executive Director, is responsible for processing Reconsideration requests, co-ordinating all functions related to Commission and Panel Meetings, and Freedom of Information and Ombudsman issues.

## Mediation and Investigation Branch

The Mediation and Investigation Branch handles all the enforcement functions of the Ontario Human Rights Commission through a network of offices across the province.

The public's first contact with the Commission is through the centralized Inquiry and Intake Office. This office handles all inquiries and drafts complaints from across the province. The Mediation Office provides mediation services as well as processing Section 34 requests which gives the Commission discretion not to deal with a complaint, if it could have been resolved elsewhere, is filed in bad faith, is beyond the time limits or is outside the Commission's legal authority. The Investigation Office undertakes investigation and conciliation of complaints.

The branch also develops multi-year strategies to effectively manage the Commission's caseload and procedures for the mediation and investigation of complaints. In addition, the branch assists in carrying out the Commission's public education mandate.

#### Policy and Education Branch

The Policy and Education Branch leads the planning, development and evaluation of the Commission's public policy and education functions. The branch is also responsible for communications, consultations, international liaison and media relations. The branch prepares and publishes guidelines, policy statements and reports on the Commission and application of the *Code*; researches a broad range of human rights and social equity issues; examines draft legislation and government policy; and advises Commission staff, senior management, the Chief Commissioner, Commissioners and the general public on policy matters. The branch also represents the Commission on intergovernmental task forces and delegations. The branch fosters understanding of and voluntary compliance with the principles of the *Code* through a range of public education and communications initiatives and programs.

#### Legal Services Branch

The Legal Services Branch assists the Commission in fulfilling all aspects of its mandate, including compliance, public education and litigation. Its activities include providing legal advice to officers and Mediation and Investigation managers concerning investigation and conciliation of cases, providing legal opinions requested by the Commission, and serving as legal counsel to the Commission before the Board of Inquiry and the courts (on matters of judicial review and appeals).

#### **Corporate Services Branch**

The Corporate Services Branch supports the Commission through the planning and delivery of human resources, information technology, financial and administrative services. The branch also co-ordinates corporate planning as well as monitoring and reporting on organizational performance. In partnership with other branches, Corporate Services co-ordinates the implementation of organizational improvement initiatives by the development of new technology applications in case management, the training of staff and by facilitating access to Commission services.

### **Public Education**

#### Organizations or groups participating in Public Education during this past year:

#### **BUSINESS**

Alliance of Manufacturers & Exporters Canada

Client Conference: Osler, Holkin, Harcourt Barristers & Solicitors

Client Conference: Smith Lyons

Client Conference: Templemann, Menninga, Kort, Sullivan & Fairbrother Client Conference: Zinn Hofley Human Resource Services Inc. (Ottawa)

Council on Education in Management (through Heenan Blakie)

Dolce International (Ontario) Inc.

Human Resources Professionals Association of Ontario (HRPAO)

HRPAO Northwestern Ontario (Thunder Bay) Personnel Administrators of Library Systems

Samsung Electronics Union Gas (Windsor)

#### COMMUNITY

ALDERCentre

Council of Agencies Serving South Asians

Downtown Legal Services (Toronto)

Fred Victor Centre

The Greater Essex Area Women's Coalition

GTA Access Community & Employment Support Services

Jewish Vocational Services of Toronto

London & Area Association for Volunteer Administration

Miziwe Biiki

Parents, Families & Friends of Lesbians and Gays (Toronto)

Participation Apartments Metro Toronto

Peel Multicultural Council

Pride Toronto '98

Tamil Anti-Racism Committee (Tamil Eelam Society)

Tobias House

Town of Ajax: Race Relations Public Policy Conference

Victim Assistance Program (519 Church St. Community Centre – Public Presentation)

Volunteer Centre of Ottawa

#### **EDUCATION**

Collège des Grands Lacs

College Educator Development Program, Western Region

Holy Cross Academy Secondary School

Humber College Early Childhood Education Program

Humber College Hotel & Restaurant Management Program

Inter-University Disability Issues Association

LINC - Ellesmere, Toronto District School Board

#### PUBLIC FDUCATION

Niagara College Law Clerk Program
Ontario Association for Counselling and Attendance Services
Osgoode Hall Law School
Queen's University Law School
Queen's University, Master of Industrial Relations Program
Toronto District School Board
Toronto District School Board Equity Studies Centre
University of Toronto Faculty of Law
University of Western Ontario Faculty of Law
York Region District School Board

York Region Roman Catholic Separate School Board

#### GOVERNMENT

Association of Law Officers of the Crown
The Board of Inquiry (Human Rights)
Ministry of Labour: Call Centre Representatives
Ontario Multi-faith Council
Senior Management Group of the Ontario Public Service (Centre for Leadership)

#### INTERNATIONAL

Delegation from Tottori Prefecture Research on Gender Equal Society
Human Rights Forum 21 (Japan)
Ministry of Justice, Tokyo, Japan
National Institute of Public International Law and Research, Pretoria, South Africa
New Zealand Human Rights Commission
Standing Advisory Commission on Human Rights, Northern Ireland

#### UNIONS

Hotel Employees, Restaurant Employees Union United Food & Commercial Workers Union

#### **CONFERENCES AND TRADE SHOWS**

HRPAO Annual Conference

The jobsMarket Employer Awareness Forum and Job Fair for Persons with Disabilities sponsored by HRDC

- "Meeting Your Duty to Accommodate" sponsored by Infonex (Toronto)
- "Sexual Harassment & Sexual Assault: The Way Forward" sponsored by the London Sexual Assault Centre
- "The Use of Mediation in Human Rights Enforcement" sponsored by the Canadian Association Against Sexual Harassment in Higher Education
- "Workplace Harassment: Prevention, Solutions & Closure" sponsored by the Canadian Society for the Advancement of Workplace Solutions

# **Boards of Inquiry**

#### FINAL DECISIONS

#### Age

Dawn Kearney, JL and Catarina Luis v. Bramalea Ltd. (now Bramalea Inc.), The Shelter Corporation and Creccal Investments Ltd.

#### **Ancestry**

Michael McKinnon v. Her Majesty the Queen in Right of Ontario, (Ministry of Correctional Services), Frank Geswaldo, George Simpson, P. James and Jim Hume

#### Association

Elma Watson and Micheline Watson v. Adriano Antunes and Arminda Antunes

#### Colour

Maxwell B. Nelson v. Durham Board of Education and Don Peel

#### **Ethnic Origin**

Michael McKinnon v. Her Majesty the Queen in Right of Ontario (Ministry of Correctional Services), Frank Geswaldo, George Simpson, P. James and Jim Hume

# Family Status

John Leonis v. Metropolitan Toronto Condominium Corporations Nos. 741 (Trillium); 742 (Vista); and 634 (Skypark)

Connie Wight v. Office of the Legislative Assembly

#### Handicap

Adam Tilberg v. McKenzie Forest Products Inc.

James Lawrence Moffatt v. Kinark Child & Family Services and Harry Oswin

Connie Wight v. Office of the Legislative Assembly

#### Harassment

Michael McKinnon v. Her Majesty the Queen in Right of Ontario (Ministry of Correctional Services), Frank Geswaldo, George Simpson, P. James and Jim Hume

Susan Riemer v. York Regional Police, Chief of Police Bryan Cousineau and Inspector Donald Kirk

Ena Drummond v. Tempo Paint and Varnish Co. (Division of Tower Chemicals Ltd.), Bernard Jakobson and Hugh Kerr

Connie Wight v. Office of the Legislative Assembly

#### Race

Michael McKinnon v. Her Majesty the Queen in Right of Ontario (Ministry of Correctional Services), Frank Geswaldo, George Simpson, P. James and Jim Hume

Elma Watson and Micheline Watson v. Adriano Antunes and Arminda Antunes

Maxwell B. Nelson v. Durham Board of Education and Don Peel

#### Reprisal

Christiane Bryan v. Premark Canada Inc., Gary Colegate and Paul Stethem

#### Sex

Dawn Kearney, JL and Catarina Luis v. Bramalea Ltd. (now Bramalea Inc.), The Shelter Corporation and Creccal Investments Ltd.

Solange Lavendar v. 944369 Ontario Limited and John Polizogopoulos

Susan Riemer v. York Regional Police, Chief of Police Bryan Cousineau and Inspector Donald Kirk

Ena Drummond v. Tempo Paint and Varnish Co. (Division of Tower Chemicals Ltd.), Bernard Jakobson and Hugh Kerr

Connie Wight v. Office of the Legislative Assembly

#### Sexual Solicitation

Ena Drummond v. Tempo Paint and Varnish Co. (Division of Tower Chemicals Ltd.), Bernard Jakobson and Hugh Kerr

Christiane Bryan v. Premark Canada Inc., Gary Colegate and Paul Stethem

#### SETTLEMENTS

#### Age

Bob Brown, Cyril Henry Dargewitcz, Nancy Dewell, by her Litigation Guardian Irvan Dewell and Mark Todd, by his Litigation Guardian Reina Todd v. Her Majesty the Queen in Right of Ontario and Ministry of Health

Donald Andrews and Robert
McEllistrum v. London Police
Services Board and London Police
Association

#### Ancestry

Irene Marques v. Portuguese Social Services Centre of Toronto, Carlos Oliveira, Luis Braganca, Antonio Letra and Sophie Amaral

#### Colour

David Grant v. Danzig Enterprises
Limited and Wigand Kruger

#### Creed

Brendan Henry v. Toronto Honda and Mort Ison

Spiros Agapiou v. Woodland Cemetery Mausoleum and Crematorium

## Ethnic Origin

Irene Marques v. Portuguese Social Services Centre of Toronto, Carlos Oliveira, Luis Braganca, Antonio Letra and Sophie Amaral

# Family Status

Cindy Rock v. Hound and Heather Restaurant, Graham Nierop, and Elda Thihideau

#### Handicap

Joe Leffelhoc v. JNM Tool & Manufacture Inc. Pat Muise v. Elmwell Investments Limited, E.I. Grossman and Morris Altman

#### Harassment

Danielle Greer v. Said Ibrahim and The Lobby Smoke Shop/Dining Lounge Elizabeth Morrison v. Robby Electric Ltd. and Anil Uppal Irene Marques v. Portuguese Social Services Centre of Toronto, Carlos Oliveira, Luis Braganca, Antonio Letra and Sophie Amaral

#### Race

David Grant v. Danzig Enterprises
Limited and Wigand Kruger

#### Reprisal

Lidia Biber v. Oakdale Cleaners & Maintenance Ltd., Nick Veneziano, Stairs Buildings Limited, and Richard Kieda

#### Sex

Elizabeth Stojanovski, Tara Carrier, Catherine Anne Buchan, Bonnie Borland, Cindy Booth and Anna Boglis v. Honeywell Limited Randy Dowswell, Linda Dowswell, Carol Metcalf, Marlene Morgan v. Village Garden Restaurant, Carol Cipollone, Gerlado Cipollone Cindy Rock v. Hound and Heather Restaurant, Graham Nierop, and Elda Thibideau

Danielle Greer v. Said Ibrahim and The Lobby Smoke Shop/Dining Lounge

Elizabeth Morrison v. Robby Electric Ltd. and Anil Uppal

Irene Marques v. Portuguese Social Services Centre of Toronto, Carlos Oliveira, Luis Braganca, Antonio Letra and Sophie Amaral

Lidia Biber v. Oakdale Cleaners & Maintenance Ltd., Nick Veneziano, Stairs Buildings Limited, and Richard Kieda

#### **Sexual Orientation**

Dennis Parks v. Pink Chestnut Bed and Breakfast, Mary Kiely and Carolyn Crowe

Robert Metcalfe v. Bell Actimedia Inc.

#### Sexual Solicitation

Irene Marques v. Portuguese Social Services Centre of Toronto, Carlos Oliveira, Luis Braganca, Antonio Letra and Sophie Amaral Lidia Biber v. Oakdale Cleaners & Maintenance Ltd., Nick Veneziano, Stäirs Buildings Limited, and Richard Kieda

# DIVISIONAL COURT JUDICIAL REVIEWS & APPEALS Ancestry

Mercy Anselm v. OHRC, Minister of Citizenship

Joyce Brome v. OHRC, North York Branson Hospital and Attorney General for Ontario

#### Colour

Joyce Brome v. OHRC, North York
Branson Hospital and Attorney
General for Ontario
Marcia Robertson v. OHRC and Maple
Leaf Foods Inc.

#### **Ethnic Origin**

Mercy Anselm v. OHRC, Minister of Citizenship

#### Family Status

OHRC and Mr. A v. Mr. B Mr. C and D Ltd.

### Handicap

Brad Thomson v. 501781 Ontario
Limited operating as Fleetwood
Ambulance Service, Ontario Public
Service Employees Union
Mrs. Joan Burman on behalf of her
daughter Riley Burman v. OHRC

#### Harassment

Shirley Hom and Cindy Petersen v. Impact Interiors Inc. and Ken Walia

#### Marital Status

OHRC and Mr. A v. Mr. B Mr. C and D Ltd.

OHRC & Geiger v. London Monenco (Geiger/Barboutsis)

#### Place of Origin

Mercy Anselm v. OHRC, Minister of Citizenship Joyce Brome v. OHRC, North York Branson Hospital and Attorney General for Ontario Marcia Robertson v. OHRC and Maple Leaf Foods Inc.

#### Race

Coldmatic Refrigeration of Canada,
George Zafir and Brian Palmer v.
Luis Espinoza and OHRC
Joyce Brome v. OHRC, North York
Branson Hospital and Attorney
General for Ontario
Marcia Robertson v. OHRC and Maple
Leaf Foods Inc.

#### Receipt of Public Assistance

OHRC and Lise Rhéaume v. René Leroux and Rencar Construction Ltd.

#### Sex

Shirley Hom and Cindy Petersen v. Impact Interiors Inc. and Ken Walia

#### Sexual Solicitation

Shirley Hom and Cindy Petersen v. Impact Interiors Inc. and Ken Walia

# Tables

Table 1: Grounds Cited in Complaints Filed by Region of Registration
Total Number of Complaints Filed = 1,850

| Eastern         | 55            | 23            | 10    | 53              | 17                | 11                 | 15  | 7              | 5             | 85       | 0                 | 2                 | 8        | 0          | 0                    | 291                                | 194                       | 10%                       |
|-----------------|---------------|---------------|-------|-----------------|-------------------|--------------------|-----|----------------|---------------|----------|-------------------|-------------------|----------|------------|----------------------|------------------------------------|---------------------------|---------------------------|
| Northern        | 17            | 8             | 3     | 16              | 5                 | 2                  | 8   | 2              | 3             | 42       | 0                 | 0                 | 4        | 0          | 0                    | 110                                | 80                        | 400                       |
| Southwestern    | 117           | 32            | 7     | 91              | 26                | 7                  | 40  | 9              | 7             | 162      | 0                 | 0                 | 18       | 1          | 0                    | 517                                | 347                       | 19%                       |
| Greater Toronto | 639           | 217           | 57    | 326             | 116               | 36                 | 111 | 32             | 32            | 471      | 12                | 2                 | 119      | 4          | 2                    | 2176                               | 1229                      | 66%                       |
| Total           | 828           | 280           | 77    | 486             | 164               | 56                 | 174 | 50             | 47            | 760      | 12                | 4                 | 149      | 5          | 2                    | 3094                               | 1850                      | 100%                      |
| Percentage      | 27%           | 9%            | 2%    | 16%             | 5%                | 2%                 | 6%  | 2%             | 2%            | 25%      | 0%                | 0%                | 5%       | 0%         | 0%                   | 100%                               | -                         | -                         |
|                 | Race & Colour | Ethnic Origin | Creed | Sex & Pregnancy | Sexual Harassment | Sexual Orientation | Age | Marital Status | Family Status | Handicap | Public Assistance | Record of Offence | Reprisal | No Grounds | Breach of Settlement | Sum of categories (total grounds)* | Total for all complaints* | Percent of all complaints |

\*Note:

Because complaints can involve multiple grounds, the sum by ground exceeds the total for all complaints filed.

Table 2: Social Areas and Grounds Cited in Complaints Filed
Total Number of Complaints Filed = 1,850

| Services               | 190           | 69            | 16    | 0               | 40                | 22                 | 33  | 15             | 7             | 123      | 0                 | 0                 | 8        | 0          | 1                    | 524  | 312                         | 17%                          |
|------------------------|---------------|---------------|-------|-----------------|-------------------|--------------------|-----|----------------|---------------|----------|-------------------|-------------------|----------|------------|----------------------|--|-----------------------------|------------------------------|
| Housing                | 59            | 17            | 5     | 13              | 7                 | 4                  | 5   | 9              | 11            | 31       | 12                | 0                 | 5        | 0          | 0                    | 178  | 94                          | 5%                           |
| Contracts              | 3             | 1             | 0     | 4               | 1                 | 1                  | 0   | 0              | 0             | 5        | 0                 | 0                 | 0        | 0          | 1                    | 16   | 12                          | 1%                           |
| Employment             | 567           | 191           | 54    | 465             | 122               | 31                 | 134 | 26             | 29            | 594      | 0                 | 4                 | 136      | 5          | 0                    | 2358   | 1420                        | 76%                          |
| Vocational Association | 14            | 3             | 2     | 6               | 0                 | 2                  | 3   | 0              | 0             | 19       | 0                 | 0                 | 2        | 0          | 0                    | 51   | 30                          | 2%                           |
| Total                  | 833           | 281           | 77    | 488             | 170               | 60                 | 175 | 50             | 47            | 772      | 12                | 4                 | 151      | 5          | 2                    | 3127   | 1868                        | 100%                         |
| Percentage             | 27%           | 9%            | 2%    | 16%             | 5%                | 2%                 | 6%  | 2%             | 2%            | 25%      | 0%                | 0%                | 5%       | 0%         | 0%                   | 100%   | 1.4                         | -                            |
|                        | Race & Colour | Ethnic Origin | Creed | Sex & Pregnancy | Sexual Harassment | Sexual Orientation | Age | Marital Status | Family Status | Handicap | Public Assistance | Record of Offence | Reprisal | No Grounds | Breach of Settlement | Sum of categories<br>(total grounds and social areas)* | Total for all social areas* | Percent of all social areas* |

#### \*Note:

Because complaints can involve multiple grounds and multiple social areas, the sums by ground and social area exceed the total for all complaints filed, and they exceed the totals given in Table 1. In Table 1, the row percentages are calculated on the basis of total complaints filed. In this Table they are calculated on the basis of total social areas cited.

Table 3: Settlements Effected by Ground in Cases Mediated in 1998/99 \*

| Race & Colour                               | \$ 788,436.86  | 149                            | \$<br>5,291.52  |
|---|----------------|--------------------------------|-----------------|
| Ethnic Origin                               | \$ 211,674.64  | 37                             | \$<br>5,720.94  |
| Creed                                       | \$ 83,880.00   | 15                             | \$<br>5,592.00  |
| Sex & Pregnancy                             | \$ 507,976.96  | 119                            | \$<br>4,268.71  |
| Sexual Harassment                           | \$ 197,497.32  | 48                             | \$<br>4,114.53  |
| Sexual Orientation                          | \$ 31,100.00   | 6                              | \$<br>5,183.33  |
| Age   | \$ 373,064.88  | 26                             | \$<br>14,348.65 |
| Marital Status                              | \$ 76,800.00   | 15                             | \$<br>5,120.00  |
| Family Status                               | \$ 38,550.00   | 13                             | \$<br>2,965.38  |
| Handicap                                    | \$ 988,808.07  | 144                            | \$<br>6,866 72  |
| Reprisal                                    | \$ 123,707.87  | 25                             | \$<br>4,948.31  |
| Not Classified                              | \$ 1,700.00    | 2                              | \$<br>850.00    |
| Sum of above categories (total for grounds) | \$3,423,196.60 | 599                            | \$<br>5,714.85  |
| Total for all complaints*                   | \$2,125,826.66 | 376                            | \$<br>5,653.79  |
|   | Monetary       | Number<br>Receiving<br>Damages | Average         |

<sup>\*</sup>Note:

Because complaints can involve multiple grounds, the sum of monetary damages by ground exceeds the sum of monetary damages by complaints.

Table 4: Complaints Closed by Disposition and Ground Total Number of Complaints Closed = 2,218

| Board Appointed       | 36            | 10            | 16    | 25              | 5                 | 6                  | 6   | 3              | 9             | 29       | 4                 | 0                 | 0        | 0          | 0                    | 149                                | 92                        | 4%                        |
|-----------------------|---------------|---------------|-------|-----------------|-------------------|--------------------|-----|----------------|---------------|----------|-------------------|-------------------|----------|------------|----------------------|------------------------------------|---------------------------|---------------------------|
| Settled               | 345           | 86            | 37    | 293             | 84                | 26                 | 71  | 31             | 29            | 305      | 5                 | 1                 | 41       | 6          | 1                    | 1361                               | 867                       | 39%                       |
| Dismissed             | 253           | 70            | 14    | 97              | 10                | 16                 | 38  | 16             | 25            | 108      | 15                | 1                 | 17       | 5          | 0                    | 685                                | 403                       | 18%                       |
| Not Dealt With (s.34) | 155           | 43            | 17    | 32              | 17                | 14                 | 15  | 7              | 8             | 70       | 1                 | 12                | 19       | 3          | 0                    | 413                                | 180                       | 8%                        |
| Withdrawn             | 310           | 93            | 17    | 196             | 44                | 25                 | 66  | 19             | 27            | 252      | 11                | 1                 | 35       | 10         | 1                    | 1107                               | 676                       | 30%                       |
| Total                 | 1099          | 302           | 101   | 643             | 160               | 87                 | 196 | 76             | 98            | 764      | 36                | 15                | 112      | 24         | 2                    | 3715                               | 2218                      | 100%                      |
|                       | Race & Colour | Ethnic Origin | Creed | Sex & Pregnancy | Sexual Harassment | Sexual Orientation | Age | Marital Status | Family Status | Handicap | Public Assistance | Record of Offence | Reprisal | No Grounds | Breach of Settlement | Sum of categories (total grounds)* | Total for all complaints* | Percent of all complaints |

<sup>\*</sup>Note:

Because complaints can involve multiple grounds, the sum by ground exceeds the total for all complaints filed.

Table 5: Complaints Closed by Disposition and Social Area
Total Number of Complaints Closed = 2,218

| Board Appointed       | 16       | 13      | 0         | 61         | 0                      | 0    | 90                                      | 92                        | 4%                        |
|-----------------------|----------|---------|-----------|------------|------------------------|------|---|---------------------------|---------------------------|
| Settled               | 94       | 46      | 3         | 729        | 4                      | 0    | 876                                     | 867                       | 39°。                      |
| Dismissed             | 75       | 33      | 2         | 249        | 6                      | 0    | 365                                     | 403                       | 18%                       |
| Not Dealt With (s.34) | 54       | 1       | 2         | 164        | 0                      | 1    | 222                                     | 180                       | 8%                        |
| Withdrawn             | 78       | 45      | 4         | 544        | 8                      | 0    | 679                                     | 676                       | 30%                       |
| Total                 | 317      | 138     | 11        | 1747       | 18                     | 1    | 2232                                    | 2218                      | 100%                      |
| Percentage            | 14%      | 6%      | 0°0       | 78%        | 100                    | 000  | 100°。                                   | -                         |                           |
|                       | Services | Housing | Contracts | Employment | Vocational Association | None | Sum of categories (total social areas)* | Total for all complaints* | Percent of all complaints |

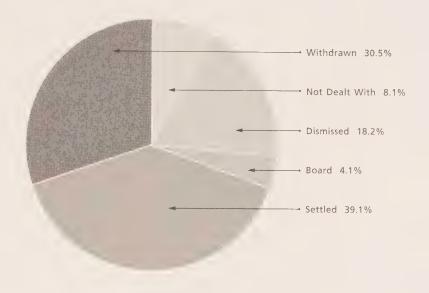
<sup>\*</sup>Note:

Because complaints can involve multiple social areas, the sum by social area exceeds the total for all complaints closed.

Table 6: Complaints Closed by Year and Disposition

| <br>    |                |   |           |   |       |    |         |     |           |  |
|---------|----------------|---|-----------|---|-------|----|---------|-----|-----------|--|
| 1994/95 | 336            | 5 | 260       | ) |       | 46 |         | 293 |           | 305  |
| 1995/96 | 331            |   | 335       | 5 |       | 37 |         | 359 |           | 312  |
| 1996/97 | 343            | 3 | 299       | ) |       | 28 |         | 314 |           | 376  |
| 1997/98 | 304            | 1 | 297       | 7 |       | 30 |         | 379 |           | 450  |
| 1998/99 | 180            | ) | 403       | 3 |       | 92 |         | 867 |           | 676  |
|         | Not Dealt With |   | Dismissed |   | Board |    | Settled |     | Withdrawn | de de deservos de la constante |

Table 7: OHRC Disposition of Closings
Closing Dispositions – 98/99 (2,218)



# Publications of the Commission

- ➤ Employment Application Forms & Interviews
- ➤ Guidelines for Assessing Accommodation Requirements for Persons with Disabilities
- ➤ Accommodation for Persons With Disabilities
- ➤ Policy On Sexual Harassment and Inappropriate Gender-Related Comments and Conduct
- ➤ Sexual Harassment and Other Comments or Actions About a Person's Sex
- ➤ Policy Statement on HIV/AIDS-Related Discrimination
- ➤ Exceptions to the Equality Rights Provision of the *Ontario Human Rights Code* as they relate to the Workplace
- ➤ Policy on Racial Slurs & Harassment & Racial Jokes
- ➤ Racial Harassment & Comments About a Person's Race
- ➤ Policy Statement on Height and Weight Requirements
- ➤ Annual Report
- ➤ Policy on Drug & Alcohol Testing
- ➤ Policy on Requiring a Driver's Licence as a Condition of Employment
- ➤ Policy on Employment-Related Medical Information

- ➤ Declaration of Management Policy
- ➤ Guidelines on Special Programs
- ➤ If You Have a Human Rights Complaint: A Complainant's Guide
- ➤ Know Your Rights Series:
  - ➤ Sexual Orientation and the *Human Rights Code*
  - ➤ AIDS & AIDS-Related Illness and the *Human Rights Code*
  - ➤ Female Genital Mutilation and the *Human Rights Code*
- ➤ Human Rights in Ontario
- ➤ Developing Procedures to Resolve Human Rights Complaints Within Your Organization
- ➤ Policy on Scholarships and Awards
- ➤ Policy on Discrimination and Language
- ➤ If You Receive a Human Rights Complaint: A Respondent's Guide
- ➤ Policy on Creed and the Accommodation of Religious Observances
- Policy on Discrimination Because of Pregnancy
- ➤ Guidelines on the Application of Section 34 of the Ontario *Human Rights Code*
- ➤ A Guide to Mediation Services
- ➤ Policy on Female Genital Mutilation (FGM)

# Financial Statement

# 1998-99 YEAR-END FINANCIAL POSITION (\$'000)

|   | 1998-99<br>Printed<br>Estimates | Year-End<br>Budget<br>Adjustments | Revised<br>Budget<br>Mar 31, 1999 | Actual<br>Expenditure<br>Mar 31, 1999 | 1998-99<br>Year End<br>\$ | Variance<br>% of Revised<br>Budget |
|---|---------------------------------|-----------------------------------|-----------------------------------|---------------------------------------|---------------------------|------------------------------------|
| Salaries & Wages                        | 7,656.1                         | 264.2                             | 7,920.3                           | 6,961.8                               | 958.5                     | 8.0                                |
| Employee Benefits                       | 1,418.6                         | 491.9                             | 1,910.5                           | 1,787.2                               | 123.3                     | 1.0                                |
| Other Direct Operatin<br>Expenses (ODOE | _                               |                                   | 2,087.9                           | 3,154.0                               | (1,066.1)                 | (8.9)                              |
|   | 11,162.6                        | 756.1                             | 11,918.7                          | 11,903.0                              | 15.7                      | 0.1                                |

#### NOTE:

The OHRC 1998-99 budget was increased \$756.1 at year-end (for Labour Adjustment Costs (LAC)).











Ontario Human Rights Commission 180 Dundas Street West, 8<sup>th</sup> floor Toronto, Ontario, M7A 2R9

For more information call in confidence:

Tel: 1-800-387-9080

TTY#: 416-314-6526 or 1-800-308-5561

Web Site: www.ohrc.on.ca

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Commissión droits de la personne

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Covernment Publications

# ANNUAL REPORT

1999-2000



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Human Rights

Commission ontarienne des

Commission droits de la personne



# ANNUAL REPORT 1999-2000

Ontario Human Rights Commission 180 Dundas Street West, 8<sup>th</sup> floor Toronto, Ontario, M7A 2R9

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Ontario Human Rights Commission

Commission ontarienne des droits de la personne

Chief Commissioner

Commissaire en chef

180 Dundas Street West Toronto ON M7A 2R9 Tel: 416.314.4541

180 rue Dundas ouest Toronto ON M7A 2R9 Tél: 416.314.4541



June, 2000

Honourable Helen Johns Minister of Citizenship, Culture and Recreation 6th Floor, 400 University Avenue Toronto, Ontario M7A 2R9

Dear Minister:

Pursuant to Section 31(1) of the Ontario Human Rights Code, it is my pleasure to provide to you the Annual Report of the Ontario Human Rights Commission for the fiscal year 1999-2000, for submission to the Legislative Assembly of Ontario.

This report reflects the activities of the Commission to March 31, 2000.

Yours sincerely,

Keith C. Norton, Q.C., B.A., LL.B.

Chief Commissioner

## MESSAGE FROM THE CHIEF COMMISSIONER



I am pleased once again to report to the Honourable Minister of Citizenship, Culture and Recreation, the Legislative Assembly and the people of Ontario on the work of the Ontario Human Rights Commission. This fiscal year, 1999-2000, is the fourth consecutive year in which the Commission has made major strides forward in improving its level and quality of service to the people of our province.

The staff of the Commission deserve a great deal of credit for what they have accomplished over the past four years in transforming the Commission into a much more effective agency of the people of Ontario in advancing public policy as set out by the Legislature in the Ontario *Human Rights Code*. Not only has the Commission managed the largest human rights caseload in Canada with ever increasing effectiveness, it has also continued to expand its public education mandate to reach directly over 8,000 people this year and has developed new policies and guidelines to assist people in interpreting and applying the *Code*. Employers, employees and any member of the public can now count on getting expert advice on human rights issues from staff who are at the forefront in human rights policy development in Canada.

While I want to emphasize this is not just a matter of numbers, the Commission has had an historic problem of delays in coping with a very heavy caseload. In the past three years with the development of a new state-of-the-art case management system, the introduction of voluntary mediation and the extensive new training for all staff we are now very close to a current caseload. Almost all of the older cases have now been processed and we have fewer cases in the system than we would normally deal with in one year.

It is, therefore, with considerable optimism that I present this report and say that your Commission is now serving the people of Ontario and assisting Ontario and Canada to maintain their international human rights commitments more effectively than at any time in recent memory.

Keith C. Norton, Q.C., B.A., LL.B

Chief Commissioner

## ABOUT THE COMMISSION

The Ontario Human Rights Commission (the "Commission") is an arm's length agency of government accountable to the Legislature of Ontario through the Minister of Citizenship, Culture and Recreation. The Commission's principal functions are set out in the Human Rights Code (the "Code") and include the investigation and settlement of human rights complaints. Under the Code, the Commission's work also includes promoting human rights and public awareness.

# POLICY AND EDUCATION BRANCH PROMOTION AND AWARENESS OF HUMAN RIGHTS

### POLICY DEVELOPMENT

In keeping with the Commission's mandate to promote understanding of human rights and encourage research to eliminate discriminatory practices, the Commission undertook a number of policy development initiatives in 1999-2000. Several consultations took place and discussion papers were released to the public on emerging policy areas. Several policies were updated and new ones were introduced. The purpose of these policies and guidelines is to help Commission staff, members of the public and those involved in human rights to understand and interpret how the *Code* applies. Highlights of the past year are outlined below.

# Pregnancy and Breastfeeding

Under Section 10 (2) of the *Code*, the "right to equal treatment without discrimination because of sex includes the right to equal treatment without discrimination because a woman is or may become pregnant". Birth and breastfeeding are natural parts of child rearing and are integrally related to the ground of sex. Refusing or denying a service to a woman who is pregnant or is breastfeeding violates the *Code* on the ground of sex.

In February 1999, the Commission settled a complaint related to an incident involving a woman who was breastfeeding her child in a restaurant and was asked by restaurant management to stop breastfeeding, to move to the restaurant's washroom or to leave the restaurant. A key element of the settlement included a request by both the complainant and the respondents that the

Commission develop an explicit policy regarding the rights of women to breast-feed in public, if they so choose. This includes the right not to be disturbed or denied access to services. Breastfeeding mothers have the same right to avail themselves of services, without discrimination, as all other people in Ontario.

As a result of the settlement, the Commission clarified and expanded its interpretation of the right of women to breastfeed and revised its *Policy on Pregnancy* to reflect the protection of breastfeeding in public areas. The Commission also developed a plain language version of its *Policy on Pregnancy* as well as a flyer entitled, *Your Rights as a Nursing Mother*. Both were distributed to public health units and midwives' associations across the province during National Breastfeeding Week in October 1999. The right to be accommodated at work is also part of the *Policy on Pregnancy*.

### Sexual Orientation

On May 20, 1999, the Supreme Court of Canada decided in M. v. H., that the opposite-sex definition of "spouse" in Part III of Ontario's Family Law Reform Act was unconstitutional. As a result, the Ontario Government introduced Bill 5, An Act to amend certain statutes because of the Supreme Court of Canada decision in M. v. H. to include the ground of same-sex partnership status. The Act amends 67 Ontario statutes, including the Code. The Commission's public policy statement on sexual orientation was released this year entitled, Policy on Discrimination and Harassment because of Sexual Orientation. It incorporates the changes made by Bill 5 and provides clear directions on the equality of persons in Ontario regardless of sexual orientation.

Released in February 2000, the Policy sets out how the *Code* protects against discrimination and harassment because of sexual orientation. It is designed to improve understanding of issues related to sexual orientation. In particular, the Policy can be used by employers and providers of services and accommodation to better understand their responsibilities under the *Code* and the need to provide equal treatment to all Ontarians.

The Chief Commissioner has written to the Attorney General with respect to some of the statutes amended by Bill 5 and other Ontario laws of potential relevance to same-sex partners. The Chief Commissioner has raised several issues in relation to these laws such as substantive equality, the dignity of individuals in same-sex relationships and compliance with the *Code*.

# Gender Identity

Misunderstanding and lack of awareness of the issues faced by transgendered people occur throughout society. Two years ago, in March 1998 at a conference held by the International Foundation for Gender Equality, the Chief Commissioner made a commitment that the Commission would undertake policy development in consultation with the transgendered community. Research, consultations and meetings were then conducted with the transgendered community, selected officials and health professionals.

Following these consultations, the Commission developed a discussion paper entitled *Toward a Commission Policy on Gender Identity*. This paper was released in October 1999 to members of the transgendered community and stakeholders associated with this issue.

Based on feedback received, the Commission approved a formal policy statement based on the discussion paper, *Policy on Gender Identity*. The Policy is based on the work done to date which includes research, community consultations and interviews with selected officials and health care professionals and a review of significant case law in this area. The document outlines the major barriers and issues that face transgendered persons.

Although the number of complaints in this area is relatively small, the discrimination, harassment and social stigma experienced by transgendered individuals is significant. In developing this Policy, the Commission aims to promote awareness of gender identity, to dispel stereotypes and myths, and to prevent discrimination and harassment against individuals because of their gender identity.

# Disability

# Guidelines for Assessing Accommodation Requirements for Persons with Disabilities

The Commission introduced its *Guidelines for Assessing Accommodation* Requirements for Persons with Disabilities in 1989. Since that time, the *Guidelines* have not undergone any revisions despite several key legal developments and emerging issues.

As a result, the Commission conducted extensive consultations with approximately 150 stakeholders to evaluate the need for revisions and to seek views on proposed revisions to the *Guidelines*. Consultees included disability

consumers and organizations, employer communities, educational institutions, law firms, labour, provincial and municipal government agencies, business and trade associations and service providers.

The Commission also sought views on two specific policy issues. The first issue was the interpretation of the "undue hardship standard" in light of the reasonableness standard set out in the 1997 *Eldridge v. British Columbia (Attorney General)* decision, and second, the "voluntary assumption of risk". This second issue arises when a person with a disability voluntarily assumes a health and safety risk (after accommodation) to himself or herself alone.

Viewpoints were varied. Members of the disability community supported the current standard of undue hardship and accommodation standards as set out in the *Code*. Representatives of the business and employer communities, however, felt that the cost standard was too onerous. They preferred to support a standard based on "reasonableness" as well as a revision of the measurement of cost. Educational service providers, while supportive of the undue hardship standard, felt that factors other than cost should determine undue hardship. Members of the deaf community indicated that governments, which are often the only sources of funding for accommodation, have a duty to accommodate and should not qualify for an undue hardship exemption.

Stakeholders also raised a number of other issues. These included the definition of "essential duties", accommodation in pre-injury work or other work, the interaction of other legislation with the *Code* dealing with employee rights and general health and safety issues, the lack of integration of arbitration decisions in the labour context into human rights analysis, and the vulnerability of workers with disabilities in non-unionized workplaces.

The overwhelming response to the Commission's consultations shows that stakeholders rely upon the *Guidelines* for directions in fulfilling the obligation to accommodate in a variety of situations. The Commission intends to release a revised version of the *Guidelines* next year. The revised version will assess the implications of decisions made by courts and boards of inquiry over the last decade and take into account their impact on the standards set out in the *Guidelines*. The *Guidelines* will also provide employers with more specific guidance on the accommodation process.

# Public Transit Accessibility Survey

As part of its ongoing commitment to disability issues, in 1999-2000, the Commission undertook a survey of the current efforts and future plans of major transit commissions in Ontario municipalities to make their systems accessible to persons with disabilities. Findings from the assessment will enable the Commission to determine current and future policy developments in the area of disability accommodation, with particular focus on transportation services.

In light of a 1997 Supreme Court of Canada decision, the Commission promotes an integrated approach to public transit as a basic social requirement. In practical terms, this means that municipalities should try to make their standard transit systems as accessible as possible, and in situations where some users still cannot access these facilities, even after accommodation, to provide other para-transit options, such as Wheel Trans. In both cases, the standard is accommodation to the point of undue hardship. The Commission will be releasing a survey on the accessibility of public transit systems in Ontario next fiscal year.

### Discussion Paper on Age Discrimination

The Commission prepared a discussion paper on age discrimination in 1999-2000, following the designation of the United Nations' International Year of Older Persons in 1999. The paper, which was developed as part of the Commission's mandate to develop policy on the major grounds in the *Code*, explores human rights issues facing older persons in Ontario in the areas of employment, housing and services and facilities. It reviews demographic trends, broader social and economic issues related to age discrimination, case law and the types of cases coming to the Commission through complaints. The paper will form the basis for public consultation prior to developing a formal public policy on this issue over the next two years.

# Discussion Paper on Insurance

As part of its mandate under the *Code* to promote awareness and understanding of human rights, the Commission initiated a research project to examine human rights issues in the insurance industry.

In 1992, the Supreme Court of Canada in *Bates v. Zurich Insurance* encouraged the insurance industry to look more closely at non-discriminatory alternatives in rate setting in the auto industry. It ruled that the insurance industry could continue to use discriminatory criteria, such as age and marital

status as a bona fide means of assessing risk, but that the industry might not be able to do so indefinitely.

In light of these comments and the relative scarcity of human rights analysis on the insurance industry in Ontario, the Commission developed a Discussion Paper, released in October 1999, to initiate dialogue on protecting human rights in insurance and to examine alternatives to current practices through consultation with industry representatives, regulators and consumers. This paper reviews insurance-related legislative authority, provisions of the *Code* and discusses issues of discrimination in insurance.

As part of the consultation, the Commission received a number of submissions and met with several representatives from the life, disability and auto insurance sectors. The Commission will release the Consultation Report this coming year and correspond with key stakeholders on issues raised during the consultation. One of the key directions of the Report is that the Commission recommend that industry, government and consumer sectors jointly establish a mechanism to further promote dialogue on human rights issues in insurance.

# Policy Dialogue

In February 2000, the Commission, in partnership with the Canadian Human Rights Foundation, held a first-ever one-day Policy Dialogue entitled *Human Rights Commissions: Future Directions*. The session's goal was to bring together a diverse range of Canadian and international stakeholders to analyze the way in which human rights institutions, civil society and government work together to identify issues, developments and challenges in the field of human rights and to generate strategies for the future.

Representatives from the Ontario Human Rights Commission, other Canadian human rights commissions, the Ontario government, and human rights non-governmental agencies (NGOs) took part in the event. As well, we were privileged to have in attendance the Special Advisor on National Institutions from the Office of the High Commissioner for Human Rights in Geneva, a member from the Canadian Human Rights Act Review Panel, a member of the UN Human Rights Committee, a Canadian Senator and several distinguished human rights experts and academics.

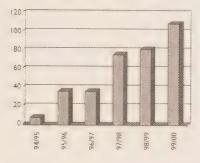
The session provided participants with an opportunity to discuss social trends and international developments and to examine the impact of these trends and developments on the role of human rights commissions. Some of the emerging issues that were identified included economic and social rights,

alternative dispute resolution and the complaints-based model as a means for addressing systemic discrimination. Also discussed was the role of human rights commissions in ensuring Canada fulfills its international human rights obligations, as contained in the international conventions, treaties and protocols it has ratified. Such information-sharing will help Canadian human rights commissions to respond better to societal changes in Canada, and to develop strategies that will enable commissions to play a greater role in the protection and promotion of human rights in the future.

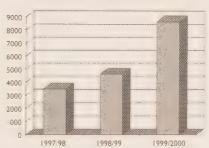
### PUBLIC EDUCATION

Promoting human rights is an equally important part of the Commission's mandate. Section 29 of the *Code* outlines the wide-ranging functions of the Ontario Human Rights Commission, and includes its responsibilities with regard to public education. In particular, Section 29(d) requires the Commission to "develop and conduct programs of public information and education and undertake, direct and encourage research designed to eliminate discriminatory practices that infringe rights under this Act".

Public Education Activities



Total Attendees at Public Education Activities



Last year, Commission staff participated in 108 public education events and delivered education and training to over 8,600 people, almost double and triple the numbers from the past two years (4,500 and 3,000, respectively), making 1999-2000 one of the most active years in the area of public education.

# Key activities included:

keynote addresses at conferences of the Association of Municipalities in Ontario, Ontario Hydro, Citizenship and Immigration Canada, the Human Resources Professionals Association, and colleges and high schools;

- taking part in a youth anti-racism conference in Sioux Lookout that brought together Aboriginal and non-Aboriginal youth from across northwestern Ontario to discuss strategies relating to the elimination of racism in their communities;
- presentations to disability groups in Sudbury and Kirkland Lake, small business owners in Kirkland Lake and Timmins, municipal employees in Windsor and the Ontario Association of the Deaf in Toronto;
- participation in information fairs for job seekers with disabilities in Toronto and Brampton, for human resource practitioners in Toronto, Durham and Ottawa, and for the general public at multicultural fairs in Milton and Ajax, as well as attendance at the 1999 Lesbian, Gay, Bisexual, Transsexual and Transgender Pride Week; and
- \* training of call centre staff at the Ministry of Labour.

In 1999-2000, the Commission also developed a second three-year public education strategy to build on the first one, which came to an end as of March 31, 2000. The new strategy entitled, *Getting the Message Out*, sets out the course for the Commission's public education activities for the next three-year period from April 1, 2000 to March 31, 2003. In particular, the new strategy focuses on increased public education activity in the education and employment sectors, greater use of thematic campaigns, and involving more staff and key stakeholders in the delivery of public education.

Partnerships have proven to be successful as a means of enhancing the Commission's public education efforts. The Commission's first public awareness campaign on sexual harassment was held in 1998. Last year, the Commission conducted a second province-wide campaign on sexual harassment on public transit vehicles throughout Ontario and expanded the campaign to liquor control board outlets. Both campaigns were conducted with private, not for profit and public sector partnerships.

The Commission also partnered with a francophone women's non-governmental organization, the *Réseau des femmes du sud de l'Ontario*, to raise awareness of the practice of female genital mutilation (FGM). This practice has been recognized not only as a health hazard and a form of violence against women and girls, but also as a human rights issue under international law. Many women living in Ontario come from areas or countries where FGM is practiced. Working with the *Réseau*, the Commission developed a brochure addressing this important women's issue based on its existing "Know Your

Rights" series. The brochure was published in English, French, Arabic, Somalian, Swahili and Amharic and was distributed to women's groups throughout the province.

During the past year, the Commission also partnered with the Council of Agencies Serving South Asians to develop a seminar on access to professions and trades for foreign trained professionals. Policy work in this area is under way as is the development of a multilingual plain language version of the Commission's *Complainant's Guide* in six South Asian languages: Hindi, Tamil, Punjabi, Gujarati, Urdu and Bengali.

The Commission also participated again as a major partner in the second Toronto Human Rights Film and Video Festival, 'Rights on Reel', held in December 1999.

In 1999-2000, the Commission also worked on the development of a teaching resource on 'Human Rights and Disabilities'. This section is part of the updated disability awareness resource teacher's manual entitled, *Discover Together*, and makes use of some of the resources already developed in the Commission's *Teaching Human Rights in Ontario*. The manual is designed to help teachers introduce non-disabled students to a variety of disability issues and to increase their awareness of the abilities of people with disabilities. The package has been recently re-released by the Equity Department of the Toronto District School Board and is being distributed to all elementary schools in the Toronto District School Board.

In the area of publications, the Commission also launched a new series of colourful plain language guides on several major policy areas. Key among these was *Human Rights at Work*, a publication that addresses workplace issues such as: accommodating persons with disabilities, anti-discrimination and harassment policies, rights for pregnant employees and benefits for same-sex partners. The guide is easy to understand and provides employers with practical information, including a list of prohibited interview questions and a sample job application form. Others in the series include, *Protecting Religious Rights, Guide to the* Human Rights Code, *Hiring? A Human Rights Guide* and *Pregnancy: Before, During and After: Know Your Rights*, and a ready reference to the most recent version of the *Code*.

The Commission also released a second edition of *Human Rights Policy in Ontario*, an up-to-date compilation of all the Commission's existing and new policy work, and produced *Human Rights at Work*, a first-ever manual for employers on human rights in the workplace.

## AN ABORIGINAL HUMAN RIGHTS PROGRAM

Under Sections 29 and 14 of the *Code*, the Commission has a statutory duty to promote and advance awareness of human rights and to allow for special programs that promote equality of opportunity. Aboriginal peoples' human rights have been identified repeatedly as a priority at the provincial, national and international levels as areas of concern. Since Ontario is home to approximately 20% of Canada's Aboriginal population, there is a need to address the human rights issues that Aboriginal persons face as a result of the cumulative and aggravated effects of economic, social and historical disadvantage and discrimination.

The Commission has put into place a special program as part of its outreach efforts to the Aboriginal community. Given that Aboriginal persons in Ontario file relatively few human rights complaints, many Aboriginal communities have little experience with the provincial human rights process, and are either unaware of the Commission's services or its ability to serve Aboriginal interests. Others view the human rights process to be unresponsive or irrelevant to the needs of Aboriginal persons. Since the Commission has no sustained or corporate presence in Ontario's Aboriginal communities, the Commission developed a Request for Proposals to develop a special program for Aboriginal persons.

The program's goals include enhancing awareness among Aboriginal persons of the protections contained in the *Code*, developing appropriate and culturally-sensitive mechanisms for accessing the Commission's services and developing a sustained corporate Commission presence within Aboriginal communities and organizations.

First steps of the proposed 18-month program will involve researching best practices for public education and awareness in Aboriginal communities, conducting a needs assessment and establishing formal partnership(s) with selected organizations that are representative of Aboriginal communities.

# NATIONAL AND INTERNATIONAL INITIATIVES

### Ontario Submissions

The Commission provides input to Ontario's submissions to reports prepared by Canada in accordance with Canada's obligations under international conventions. The Commission's comments highlight relevant legislative, judicial and administrative policies, programs and activities during the given reporting period as they relate to particular articles in the respective conventions. In September 1999, the Commission prepared comments for consideration on three reports:

- ❖ Canada's 13th & 14th Report on the International Convention on the Elimination of All Forms of Racial Discrimination;
- \* Canada's Second Report on the Convention on the Rights of the Child; and
- Canada's Fifth Report on the Convention on the Elimination of All Forms of Discrimination Against Women.

# Canadian Association of Statutory Human Rights Agencies (CASHRA)

CASHRA's membership includes all the human rights commissions and fair practices offices in each of the 10 provinces, 3 territories and the federal government. During the 1999-2000 fiscal year, the Commission led a joint effort of representatives of CASHRA member agencies to develop an educational initiative that highlights every person's responsibility to ensure that human rights are respected in the workplace. This poster will be launched at the CASHRA 2000 Conference in May 2000.

# International Delegations and Visitors

As part of its responsibility to promote human rights, in 1999-2000, the Commission hosted a number of delegations and visitors from around the world including Sri Lanka, India, Japan, Chile, South Africa and Nigeria. Several of these visits related to the establishment or strengthening of human rights commissions, information-sharing and technical co-operation.

# LEGAL SERVICES BRANCH

In the 1999-2000 fiscal year, the Legal Services Branch handled some 147 boards of inquiry, 21 judicial reviews, and 11 appeals, including two at the Supreme Court of Canada.

The following are highlights of some of the significant decisions and cases over the past year that are noteworthy to all those with an interest in human rights advancement.

### APPEALS

# M. v. H. Supreme Court of Canada (intervention)

The Commission intervened at the Supreme Court of Canada in a case known as *M. v. H.*<sup>1</sup>. The applicant "M" went to court to obtain an order of support against "H", her former same-sex partner, after their twelve-year relationship had ended. At the outset of her support motion, "M" argued that the opposite-sex definition of "spouse" in Section 29 of Ontario's *Family Law Act*<sup>2</sup>(*FLA*), which precluded her from making an application for support in the context of a lesbian common law relationship, constituted a denial of the equality rights in Section 15 of the *Charter*.

Result at Supreme Court: On May 20, 1999, the Supreme Court of Canada found that the opposite-sex definition of "spouse" in Part III of Ontario's *FLA* was unconstitutional. The Court found that the exclusion of same-sex couples from Section 29 of the *FLA* constitutes an infringement of equality rights that cannot be justified as a reasonable limit on constitutional rights under Section 1 of the *Charter*. The Court declared Section 29 of the *FLA* to be of no force and effect but suspended the application of its declaration for a period of six months in order to give the Ontario government an opportunity to make the appropriate changes to the law.

Current Status: In response to the Supreme Court's decision, the provincial government introduced Bill 5 in the Ontario Legislature on October 25, 1999. It received Royal Assent on October 28, 1999 and came into force on March 1, 2000. The Bill amended the *FLA*, on November 20, 1999, so that its provisions governing support obligations now apply to same-sex partners. The *FLA*'s provi-

<sup>1.</sup> Attorney General of Ontario v. M. and H., [1999] 2 S.C.R. 3.

<sup>2.</sup> Family Law Act, R.S.O. 1990, c. F. 3..

sions relating to domestic contracts and dependants' claims for damages have also been extended to same-sex partners. Bill 5 also amends a number of other statutes (including the *Code*) so that they now apply to same-sex partners.

# B.C. Human Rights Commission et al. v. Blencoe Supreme Court of Canada (intervention)

In the summer of 1995, two human rights complaints were filed alleging that Robin Blencoe, a former provincial Cabinet Minister, had sexually harassed them. In late November 1997, Blencoe filed an application for judicial review of the Commission's referral of the complaints to the British Columbia Human Rights Tribunal. He alleged that inordinate delay in the processing of the complaints had caused him prejudice, amounting to a denial of natural justice.

In February 1998, the chambers judge dismissed Blencoe's application for judicial review which was subsequently appealed to the British Columbia Court of Appeal.

# Result at Court of Appeal: The Court of Appeal held that:

- a) the complaints were "relatively simple ones", involving no complex issues;
- b) any delay in the proceedings of the complaints must necessarily have prejudiced Blencoe;
- c) if Blencoe had been charged in the criminal courts with this type of "sexual assault", the charge would very likely have been dismissed on grounds of delay;
- d) the exacerbation of an existing state of affairs may trigger Section 7 of the *Charter* right to security of the person;
- e) if complainants in sexual assault cases are protected by Section 7 of the *Charter* when facing disclosure of confidential materials, then respondents in sexual harassment hearings, facing protracted intrusion into the intimate details of their lives based on as of yet unproven charges, must also be extended the same protection;

- f) the emerging, preferred view in the Supreme Court of Canada is that Section 7 of the *Charter*, under the rubric of liberty and security of the person, operates to protect both the privacy and dignity of citizens against the stigma of undue, prolonged humiliation and public degradation of the kind suffered by Blencoe in connection with the complaints against him; and
- g) the delay in this case was so excessive when weighed against the seriousness of the "charge" and the simplicity of the issues that it could never be viewed as reasonable under any test, and was not in accordance with fundamental justice.

Current Status: The appeal of this case was heard in the Supreme Court of Canada on January 24, 2000. The Court's decision is pending.

The consequences of an unsuccessful appeal in this case would be quite far-reaching for the Ontario Human Rights Commission, and indeed for the Commissions in other jurisdictions. In all likelihood, it would open the door for respondents to raise Section 7 arguments in cases where the allegation was not that of sexual harassment.

## DIVISIONAL COURT

OHRC and Mike Naraine v.
Ford Motor Company of Canada Ltd., et al.
Superior Court of Justice, Divisional Court, June 23, 1999

The complainant worked for nine years for Ford as an electrician. During that period of time he experienced continuous racial harassment. The Board of Inquiry held that this harassment poisoned the complainant's work environment and was responsible, in part, for the discipline he received at Ford. The Board held that Mr. Naraine's ultimate dismissal was improper because Ford had failed to consider the effect the poisoned environment was having on the complainant.

Ford appealed the Board decision to the Divisional Court.

**Result on Appeal:** In a unanimous decision the Divisional Court dismissed the appeal. In part, the Court held the following:

### Delay

• The Court noted that the Board was in an "excellent position" to determine whether there would be prejudice to Ford, having heard all the evidence, and therefore its decision on this matter ought to be given deference.

### Res Judicata/Issue Estoppel

• The Court agreed with the Board's determination that it was appropriate to re-visit the issues addressed by the labour arbitrator – particularly the issue of the final alleged assault between Mr. Naraine and a co-worker – in order to make a determination on the human rights issues.

### "Exclusion" of Evidence

• The Court held that the Board was entitled to exclude as irrelevant evidence of events subsequent to Mr. Naraine's termination from Ford. In any event, the Court noted that the Board did not exclude this evidence, but rather admitted it and then, as it was entitled to do, gave it no weight.

### **Employer Liability**

• The Court upheld the Board's decision that Ford could be held liable for the racial harassment on the basis that it failed to do anything – indeed was indifferent to – the racial slurs and graffiti at its Windsor operations.

Current Status: Appeal pending in the Court of Appeal.

# McKenzie Forest Products Inc. v. Adam Tilberg et al. Divisional Court Decision, Judicial Review: May 31, 1999

McKenzie Forest Products Inc. sought judicial review of an interim decision of the Board of Inquiry made in the course of a hearing into the complaint of Adam Tilberg. In his complaint, Tilberg alleges that McKenzie refused him employment because he was born without thumbs.

The Commission referred Tilberg's complaint to the Board. Subsequently, the Commission advised the Board and the parties that it had reached a settlement of the public interest issues between it and McKenzie Forest Products would "no longer participate" in the hearing. Tilberg was aware of his right to proceed on his own. The Commission requested, "as a condition of its withdrawing from the proceedings," a letter of assurance from McKenzie which McKenzie provided.

The hearing into Tilberg's complaint resumed in the absence of the Commission. McKenzie then brought a motion before the Board for an order dismissing Tilberg's complaint on the basis that "the Commission's decision to withdraw and relinquish carriage of the proceedings had left the Board without jurisdiction to continue." The Commission was put on notice and opposed McKenzie's motion.

**Result at Board:** The Board ruled that it had jurisdiction to continue with the hearing of Tilberg's complaint, notwithstanding the steps taken by the Commission to abandon active carriage of the complaint before the Board. McKenzie then brought an application for judicial review of the Board's interim ruling.

Result of Judicial Review: The majority of the Divisional Court granted McKenzie's application for judicial review. The Court held that the Commission has a statutory duty, pursuant to Section 39(2) of the Code, to "have the carriage of the complaint" and that where the Commission had taken steps to surrender active carriage of the complaint, the Board no longer had jurisdiction to hear the complaint. The Court held that, in the absence of the Commission's involvement in the proceedings, no other party has the statutory authority to have carriage of the complaint. The Court also held that the public interest represented by the Commission prevails, in the event of conflict, over the private interests and rights of individual complainants.

Current Status: Appeal pending in the Court of Appeal.

# BOARD OF INQUIRY HEARINGS

Brillinger and the Canadian Lesbian and Gay Archives v. Imaging Excellence Inc. and Scott Brockie Board of Inquiry Decision: September 29, 1999

The complainant, Ray Brillinger, sought printing services – envelopes, letterhead and business cards – from the respondent Imaging Excellence Inc. for the Canadian Lesbian and Gay Archives (the "Archives"). The president of Imaging Excellence, Scott Brockie, denied the service on the basis of his religious beliefs. Scott Brockie believed that homosexuality is contrary to the teachings of the Christian Bible. Mr. Brockie argued that his right to freedom of religion under Section 2(a) of the Canadian Charter of Rights and Freedoms (the "Charter") acts as a defence to the denial of services.

The hearing proceeded in two stages: the first stage dealt with an infringement of the *Code* and the second stage addressed the Section 2(a) Charter defence.

Result at Board (First Stage): The Board held that the Canadian Lesbian and Gay Archives is protected under the sexual orientation ground of the Code. She held that organizations like the Archives are "so imbued with the identity or character of their membership, or so clearly representative of a group that is identified by a prohibited ground under the Code, that they cannot be separated from their membership and the organization itself takes on the protected characteristic".

The Board held further that both Ray Brillinger and the Archives were denied printing services contrary to Section 1 of the Code. She held that Ray Brillinger was discriminated against indirectly as a member of the Archives, as was its then president, because of his association with the Archives. The Board held that the Archives was discriminated against directly and by way of association.

Current Status: Argument on the Charrer proceeded on November 1, 1999. The Board reserved her decision.

# Nicole Curling v. The Victoria Tea Company Ltd., A. Torimiro and The Torimiro Corporation Board of Inquiry Decision: December 22, 1999

The complainant, Nicole Curling, filed a complaint against her employer. Alexander Torimiro and The Victoria Tea Company on April 15, 1994, alleging sexual harassment and sexual solicitation contrary to Section 7(2) and 7(3)(a) of the *Code*. In 1998, the complaint was amended to include discrimination in employment because of sex contrary to Section 5(1) and 9.

During the course of the hearing in September 1999, an allegation of Section 8 reprisal was added to the complaint as a result of a defamation law suit launched by the personal respondent and his new corporate entity. The Torimiro Corporation, which was also added as a respondent.

Result at Board: The Board found that Nicole Curling was subjected to a poisoned work environment due to the sexualized workplace climate. The Board found the personal respondent's behaviour towards the complainant, such as unwanted touching, kissing and comments about her body, constituted sexual harassment.

The Board held that the personal respondent's persistent pursuit of a relationship with the complainant constituted sexual solicitation. Expert evidence was led that sexual harassment should also be understood in the terms "relational advances". The typical traits of this latter type of harassment being where the respondent harasser pressures the target to form an intimate relationship, usually starting with gifts, special attention and invitations for dates. The Board noted that "relational advances" are often not seen as harassment and are treated lightly by co-workers and employers because the conduct has the semblance of a courtship and infatuation.

With respect to the previous finding of sexual harassment by the personal respondent, expert evidence was led that clearly revealed the respondent to be a "repeat offender, who did not recognize his responsibility and who engaged in a pattern of escalating behaviour".

The respondents launched a civil action against the complainant seeking \$1.5 million for damage to reputation arising out of the human rights complaint process. The Board found that reprisal was clearly a factor in the respondents' lawsuit. The Board held that in making threats against the complainant, her family, the Commission and its witnesses, the respondents' conduct was a form of retaliation.

Current Status: A decision with respect to remedies is pending.

# MEDIATION AND INVESTIGATION BRANCH

# INQUIRIES AND INTAKE

The Inquiry and Intake Service Unit is the first point of contact for members of the public who need information on filing a human rights complaint. Callers receive basic information on how to contact the Commission, how to file a complaint and other information about the human rights process. During 1999-2000, the Unit received a total of 153,306 telephone calls. Staff responded to 52,030 calls or 85% of the 60,977 callers who opted to speak to an inquiry service representative. On average, calls were responded to within 2 minutes. Staff sent out 4,246 intake questionnaires, and received 2,409 completed intake packages in return. Of these, 1,861 or 77% became human rights complaints.

### MEDIATION

Mediation is a formal and voluntary opportunity for parties involved in a complaint to meet and resolve their issues at the outset of the complaint process. In 1999-2000, more than half of the total number of cases, 1,270 were resolved at the mediation stage. The settlement rate at mediation is 74%. During the past year, the Commission also published a survey of participants who used its mediation process. Findings show that some 75% of complainants and respondents who are eligible for mediation services choose this method of dealing with their situations. The survey also reflected a high degree of success, with 70% of the complainants mentioning that they felt their issue was properly addressed, and 78% of the respondents indicating that they felt that the process was fair. Over 87% of those participating in the survey indicated that they would use mediation again if they had another human rights complaint.

### INVESTIGATION

The success of the voluntary mediation program has in turn meant that the number of complaints under investigation has been steadily dropping from 1,780 in March 1998 to 1,140 in March 1999 to 718 in March 2000. It has also enabled the Commission to focus its investigation resources on older cases, particularly those that are two years of age or older. Last year, the Commission

committed to resolve 1,100 cases through the investigative process and achieved 94% of this target. It also committed to resolve 80% of cases that were two years of age or older as of March 31, 1999. This year, it resolved 555 cases which represents 106% of last year's target of 520 cases. This reduction in the older cases has had a remarkable impact in the reduction of the average age of the caseload, which is 13 months.

The Commission has also made significant strides in improving the timeliness in handling complaints. The average time required to process a complaint from opening to decision is currently 18 months down from 22 months last year, and the median age of complaints in the system is now 9 months.

The Commission also met its public performance measures set out in the Ministry's 1999-2000 business plan. Last year, it committed to achieve a 65% settlement rate at the mediation stage. This year, it accomplished a rate of 74%.

### THE CASELOAD

During the 1999-2000 fiscal year, the Commission made significant strides in a number of areas including caseload management, timeliness of handling complaints and public education. Expectations for this year have been either met or exceeded in all areas.

For a fourth year in a row, the Commission has resolved more cases than it opened. In 1999-2000, it opened 1,861 and resolved 2,305 cases, making 1999-2000 one of the most productive years in the Commission's history. As at March 31, 2000, the Commission's active caseload was 1,952 compared to 2,386 on March 31, 1999 and 2,745 on March 31, 1998. Three years ago, the Commission made a commitment to the Ontario public to achieve a current caseload. Given this year's statistics, which show that the caseload roughly matches the number of complaints it receives each year, and the average age of a complaint in the system is 13 months, the Commission is very close to achieving this goal. The Commission also sent 92 complaints to the Board of Inquiry (Human Rights).

# RESTRUCTURING

In 1999-2000, the Commission restructured its corporate services, including the planning and delivery of human resources, information technology and financial and administrative services. The corporate planning function now resides with the Office of the Executive Director. Responsibilities include monitoring and reporting on organizational performance, the implementation of organizational improvement initiatives such as the development of new technology applications in case management and the training of staff. Other functions such as Web site management, distribution and publications have been transferred to the Policy and Education Branch.

During the year, the Commission also faced the challenge of having to find additional savings as part of government-wide budget restrictions. The best solution turned out to be the implementation of new working arrangements for Commission staff in the regions through teleworking. As a result, some staff will share office space with other government ministries and others will be working from home. This has helped to keep both jobs and a presence in the regions outside of Toronto.

Commission staff also worked on developing a new Quality Assurance Program and each Branch established its own standards and identified means for managing and maintaining them. These service standards will be put into practice in the coming year.

# ACCOUNTABILITY FRAMEWORK

The Commission has presented an accountability framework in the last two annual reports (1997-1998, 1998-1999). The framework is designed to establish targets for the organization's performance in the coming year as well as report on achievements against previously established targets.

The following is a summary of achievements against targets in the 1999-2000 fiscal year.

| SERVICE AREA                                  | 1999-2000 COMMITMENTS  | 1999-2000 ACHIEVEMENTS   |
|---|--|--|
| Promotion and<br>Awareness of<br>Human Rights | <ul> <li>Conduct second public<br/>awareness campaign on sexual<br/>harassment.</li> </ul>   | Campaign ran twice, once on public transit vehicles and once in LCBO outlets across the province.  |
|   | Increase liaison activities with<br>Aboriginal communities.  | Developed Request for Proposals (RFP) for <i>Aboriginal Human Rights Program</i> to sustain OHRC presence in off-reserve Aboriginal communities and to enhance equality for Aboriginal persons in Ontario. |
|   | <ul> <li>Maintain international and<br/>national liaison.</li> </ul>   | Provided comments on Canada's reports under various international instruments.   |
|   |  | Hosted several international delega-<br>tions from: Sri Lanka, India, Japan,<br>Chile, South Africa and Nigeria.   |
|   |  | Worked with member commissions of CASHRA to develop poster on Human Rights in the Workplace.   |
|   | <ul> <li>Maintain distribution levels of<br/>Commission publications<br/>(10,000 per year).</li> </ul>                                     | Approximately 30,000 copies of publications distributed.   |
|   | <ul> <li>Maintain 1998-1999 levels of<br/>public education activities (80<br/>events, reached approximately<br/>4,600 persons).</li> </ul> | Staff participated in 108 events and reached 8,636 persons.  |
|   | • Increase the number of hits on the Web site by 10%.  | Achieved a 20% increase over last year.  |

| SERVICE AREA          | 1999-2000 COMMITMENTS   | 1999-2000 ACHIEVEMENTS  |
|-----------------------|---|---|
| Policy                | • Develop a policy position on sexual orientation.  | Released <i>Policy on Discrimination and</i> Harassment because of Sexual Orientation.  |
|                       | <ul> <li>Initiate policy work on age discrimination.</li> </ul>   | Developed discussion paper on Age<br>Discrimination.  |
|                       |   | Other policy work   |
|                       |   | Developed policy paper on gender identity.  |
|                       |   | Developed discussion paper on Insurance.  |
|                       |   | Conducted consultations on revisions to<br>Guidelines for Assessing Accommodation<br>Requirements for Persons with Disabilities<br>and developed consultation report. |
|                       |   | Conducted survey on accessibility for persons with disabilities to mass transit vehicles in Ontario municipalities.   |
|                       |   | Launched first-ever Policy Dialogue on developments in human rights.  |
|                       | • Review legislation and bills tabled before the legislature for compliance with the <i>Code</i> .                                    | Reviewed Bill 5 and incorporated changes to sexual orientation policy, <i>Mental Health Act</i> , Drug Testing for Welfare Recipients.                                |
| Inquiry Services      | <ul> <li>Average response time on calls<br/>handled by an Inquiry Service<br/>Representative will be under<br/>60 seconds.</li> </ul> | A 30% increase in callers actually speaking with a staff person resulted in an average response time of within 2 minutes.   |
| Intake Services       | Maintain 15-day processing<br>time for drafting of complaints.  | Complaints are drafted within 30 days of receiving an intake package.   |
| Mediation<br>Services | • Achieve at least a 65% settle-<br>ment rate in cases in which<br>mediation has been attempted.                                      | Achieved a settlement rate of 74% in cases in which mediation was attempted.  |
|                       | • Resolve 1,100 cases through mediation services.   | 1,270 cases resolved through mediation services.  |

| 1999-2000 COMMITMENTS   | 1999-2000 ACHIEVEMENTS  |
|---|---|
| • Resolve 80% of cases over 2 years of age as at March 31, 1999.  | Resolved 555 cases which represents 106% of last year's target of 520 cases.  |
| • Resolve 1,100 cases through investigation services.   | 1,035 cases resolved through investigation services.  |
| • Reduce the median age of the caseload to under 10 months.   | Median age of the caseload as at March 31, 2000 is 9 months.  |
| • Decrease the average age of the caseload to 14 months.  | Average age of the caseload is 13 months.   |
| • Quality Service Standards introduced in September 1999.   | Quality Service Standards have been developed for each Branch.  |
| <ul> <li>Training programs to be<br/>provided on public education,<br/>mediation, sexual harassment<br/>cases and quality service.</li> </ul> | Training provided to new intake/inquiry and investigative staff.  |
|   | Training programs also delivered on writing case analyses and reasons, conducting conciliations as well as on the telework process for affected staff and for the Mediation and Investigation Branch staff development session.   |
| • Initiate Accessibility Review of Commission services and employment practices for persons with disabilities.                                | RFP for Accessibility Review completed.   |
|   | <ul> <li>Resolve 80% of cases over 2 years of age as at March 31, 1999.</li> <li>Resolve 1,100 cases through investigation services.</li> <li>Reduce the median age of the caseload to under 10 months.</li> <li>Decrease the average age of the caseload to 14 months.</li> <li>Quality Service Standards introduced in September 1999.</li> <li>Training programs to be provided on public education, mediation, sexual harassment cases and quality service.</li> <li>Initiate Accessibility Review of Commission services and employment practices for</li> </ul> |

The following are the Commission's public commitments for the 2000–2001 fiscal year.

| SERVICE AREA                                  | 2000-2001 COMMITMENTS   |  |
|---|---|--|
| Promotion and<br>Awareness of<br>Human Rights | <ul> <li>Conduct one new public awareness campaign.</li> <li>Implement Aboriginal program.</li> <li>Ensure international obligations are integrated into all new policy work.</li> <li>Launch policy initiative for CASHRA 2001.</li> </ul>   |  |
|   | • Enhance accessibility of publications through new series of 'one-pager' information sheets on all major areas of the <i>Code</i> .  |  |
|   | <ul> <li>Achieve a satisfaction rate of 80% among participants for all public<br/>education activities.</li> </ul>  |  |
|   | • Launch new Web site that improves access, is easier to use and more client-focused.   |  |
| Policy  | Release paper on Age Discrimination.  |  |
|   | <ul> <li>Conduct consultations and develop public policy document on Age<br/>Discrimination.</li> </ul>   |  |
|   | • Release Policy Paper on Gender Identity.  |  |
|   | • Release consultation report on human rights issues in Insurance.  |  |
|   | • Release revised Guidelines for Assessing Accommodation Requirements for Persons with Disabilities.  |  |
|   | • Release report on survey of accessibility to transit vehicles.  |  |
|   | Conduct second policy dialogue.   |  |
| Inquiry Services                              | • The average response time on calls handled directly by inquiry staff will be within 2 minutes.  |  |
| Intake Services                               | • Draft complaints within 15-20 days from receipt of intake questionnaire.  |  |
| Mediation Services                            | • Achieve at least a 65% settlement rate in cases in which mediation is attempted.  |  |
|   | Resolve a minimum of 1,300 cases through mediation services.  |  |
| Investigation<br>Services                     | <ul> <li>Resolve 80% of cases over 1 year old as at April 1, 2000.</li> <li>Resolve a minimum of 850 cases through investigation services.</li> <li>Reduce the median age of the caseload to below 9 months.</li> <li>Decrease average age of the caseload to 12 months.</li> </ul> |  |
| Corporate<br>Initiatives                      | <ul> <li>Implement Quality Service Standards.</li> <li>Develop training program on public education techniques.</li> <li>Launch Accessibility Review.</li> </ul>  |  |

# APPENDICES

### LIST OF COMMISSIONERS



KEITH C. NORTON, Q.C., B.A., LL.B. Chief Commissioner

Keith Norton was appointed Chief Commissioner of the Ontario Human Rights Commission on July 18, 1996. He is an educator and a lawyer by training, having studied law at Queen's University in Kingston, as well as having received a diploma in education from the Ontario College of Education. He practiced criminal and family law in Kingston, Ontario, and taught

at the secondary and post-secondary levels.

Mr. Norton is a former Minister of Community and Social Services and served as Parliamentary Assistant to the Treasurer of Ontario and Minister of Economics and Intergovernmental Affairs. He has also served as Minister of Health, Minister of Education and Minister of Colleges and Universities.

As Minister of the Environment between 1981 and 1983, Mr. Norton became the first Canadian cabinet minister to testify before a Committee of the United States Senate. Throughout his career, Mr. Norton has championed issues related to persons with disabilities, senior citizens and the disadvantaged. He has also been involved in a number of business ventures.

Mr. Norton is a former President of the Canadian Human Rights Tribunal.



### CHERYL BLONDELL

Cheryl Blondell was appointed to the Commission in February 1997. She is an Assistant Crown Attorney in the Ministry of the Attorney General. She formerly served as Criminal Duty Counsel with the Ontario Legal Aid Plan, where she advised and represented accused persons. Ms. Blondell worked for the Commission in the summer of 1989 as part of the team that created the Systemic Investigations Unit.



### The Revd Fr. WILLIAM G. CLIFF

Fr. Cliff was appointed to the Commission in February 1997. He is the Rector of St. John the Evangelist Church in Strathroy in the Diocese of Huron. He is a former member of the University of Western Ontario Senate, a Padre with the Royal Canadian Legion and a member of the Anglican Roman Relations Committee of the Diocese of Huron. A former Chaplain Intern at St. Joseph's Health Centre, London, he was trained at King's

College and Huron College at the University of Western Ontario and has served congregations in London, Simcoe, Hanover and Durham, Ontario.



### RICHARD MILES

Before his appointment to the Commission in July 1992, Richard Miles held senior administrative positions with the Ministry of Community and Social Services, the Federal Secretariat for Disabled Persons Office, and the Handicapped Action Group Incorporated in Thunder Bay. Mr. Miles was appointed by the Minister of Citizenship, Culture & Recreation to the task force, which conducted a procedural review of the Ontario Human Rights Commission.



### MARNIE PAIKIN, CM

Marnie Paikin was appointed to the Commission in September 1996. She is a past President of the Canadian Council of Christians and Jews, and a recipient of the Province of Ontario's "Outstanding Woman Award" and of the Human Relations Award of the Canadian Council of Christians and Jews. She has been inducted into the Hamilton Gallery of Distinction and has been appointed a Member of the Order of Canada. Ms. Paikin is currently a Director of Atomic Energy of Canada Ltd. and of Westcoast Energy Inc.



### PETER LI

Peter Li is the General Manager of Ming Pao Daily News, Eastern Edition. Mr. Li was appointed to the Commission in September 1997. He is a member of the Chinese Canadian Development Committee of the Hospital for Sick Children Foundation and sits on the Asian Business Committee of Metro Toronto and York Region's Junior Achievement. Mr. Li was a member of Canada Trust's Asian Advisory Council. He has also served as a Director of the

Chinese Information and Community Services and was a past Vice-President of the Chinese Canadian Advertising, Media and Marketing Association. Mr. Li is a former General Manager of Hotel Victoria and Project Administrator of the Chinatown Centre.



### NALIN KANUCK

Nalin Kanuck was appointed to the Commission in September 1997. He is a Management and Financial Consultant. He is also an advisor on Race Relations to the York Region Board of Education. Mr. Kanuck is a former Justice of the Peace in Sri Lanka, a position that required him, among other judicial functions, to investigate human rights violations. He was also Chairman and Managing Director of the Regional Development Board in

the Ministry of Regional Development in Sri Lanka. He also functioned as a Director of the National Youth Service Council in Sri Lanka's Prime Minister's Office. Mr. Kanuck has a Bachelor of Arts Degree from the University of Ceylon and an Executive Diploma in Public Administration from the University of Colombo, Sri Lanka. The City University of California also awarded him an Honourary Doctorate Degree in Public Administration. He is a graduate of the Canadian Institute of Certified Administrative Managers and a Fellow of the British Institute of Management, England.



### MICHEL LALONDE

Michel Lalonde is Reeve of the East Hawkesbury municipal council, having served over the last 20 years as Councillor and as Deputy Reeve. He was appointed to the Commission in December 1997. In 1993, Mr. Lalonde served as Warden of the Council for the United Counties of Prescott and Russell. He was subsequently elected to the Council's executive, planning and public works committees. He received the Award of Merit for the County of

Prescott for the year 1985 and also served as President of the Prescott Mutual Insurance Board and of the Hawkesbury and District General Hospital Board. A farmer by occupation, Mr. Lalonde is an active participant in the local farming community. He served from 1989 to 1996 on the board of directors of the Glengarry, Prescott and Russell Local Agricultural Employment Board and as President of the Prescott Peer Review Committee for Environmental Farm Plan from 1993 to 1997.



### **CLAUDETTE ROBINSON**

Claudette Robinson was appointed to the Commission in March 1998. She studied at the University of Ottawa and McMaster University. Ms. Robinson is the French Coordinator at Sheridan College and a language consultant for corporate clients. She has co-authored a series of French readers for elementary and secondary schools. She was the author and co-author of three national French television series for TVO educational programs one of which she hosted.

She has been consultant for the Halton Board of Education, has taught at the University of Ottawa summer school and has been Principal of the Teaching French as a Second Language course for the Ministry of Education.



### ABDUL HAI PATEL

Abdul Hai Patel was appointed to the Commission in April 1999. Mr. Patel received his primary education in India, secondary education in Barbados and post-secondary education at York University. He is currently employed with Ontario Hydro as a Systems Technical Specialist.

Mr. Patel is a recipient of the Canada 125 commemorative medal from the Governor General for Community Service. He is a recipient of the

Volunteer Service Award from the Ministry of Citizenship, Culture and Recreation, a member of the South & West Asian consultative committee of the Toronto Police, and a coordinator of the Islamic Coordinating Council of Imams-Canada. Mr. Patel is also the Vice-Chair of the Association of Employees for Employment Equity in Ontario Hydro and serves as a member of the Provincial Committee of Power Workers Union on Employment Equity and Diversity.



### CHRISTIANE RABIER

Christiane Rabier was appointed to the Commission in April 1999. Ms. Rabier received her PhD from the University of Nice-Sophia-Antipolis; she received her masters from the University of Montreal and studied public law at the University of Montpellier in France. She is currently Chair of the Department of Political Science and Vice-Dean of Social Sciences and Humanities at Laurentian University in Sudbury.

Ms. Rabier is active within the francophone community in Sudbury and has worked on a program for francophone women to attend post secondary studies, as well as served as a consultant with TV Ontario on Continuing Education. She also served as a volunteer with Canada's Special Olympics in 1998 and Operation Red Nose in 1999.



### JUDITH-ANN MANNING

Judith-Ann Manning was appointed to the Commission in February 2000. Ms. Manning is an Accessible Services Planner/Barrier-Free Consultant. She majored in Criminology and Law at the University of Toronto. She currently is the Co-ordinator of the University of Toronto's Wheelchair Access Committee and has held the position of Chair of the North York Advisory Committee For Persons With Disabilities, co-Chair of the Board of Directors

of the Centre for Equality Rights in Accommodation, and vice-Chair of the Toronto Transit Commission's Advisory Committee on Accessible Transportation. Ms. Manning also volunteers at the Sunnybrook Health Science Centre in the annual Run for Research.

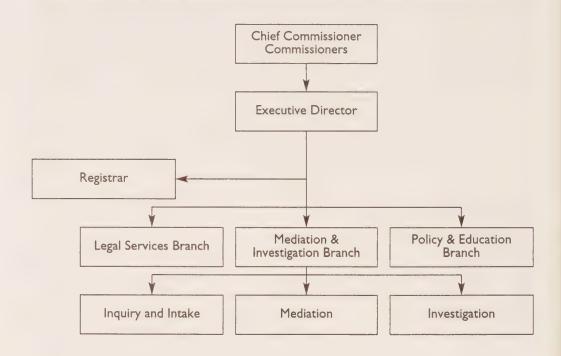


### MAE RADFORD

Mae Radford was appointed to the Commission in April 1999. Ms. Radford received a diploma in nursing from the Toronto Western Hospital and a Bachelor of Arts in health administration from York University. She is currently the manager of volunteer services, overseeing operations of a team of 1,700 volunteers who deliver friendly visiting, palliative care volunteer visiting, transportation, and Meals on Wheels for the VON Hamilton-Wentworth.

Ms. Radford is a member of the Coalition of Community Health and Support Services, which advocates for community-based health care. She is a member of the Ontario Community Support Association and the Chair of District B. Ms. Radford is the vice-chair of the Citizen Committee for Violence Against Women for the City of Burlington.

### ORGANIZATIONAL CHART



# BRANCH DESCRIPTIONS

### Office of the Chief Commissioner

The Office of the Chief Commissioner provides leadership and guides the Commission in carrying out its statutory functions in a way that ensures that, at both the government and community levels, human rights are protected in the province. The Chief Commissioner and Commissioners set policy direction and make decisions about complaints relating to the *Code*.

### Office of the Executive Director

The Office of the Executive Director provides leadership and direction to senior management staff of the Commission in carrying out its statutory mandate; directs the development and implementation of corporate and operational plans; and leads the planning and implementation of ongoing organizational improvement initiatives within the Commission. The Registrar's Office, attached to the Office of the Executive Director, is responsible for processing Reconsideration requests, co-ordinating all functions related to Commission and Panel Meetings, and Freedom of Information and Ombudsman issues.

# Mediation and Investigation Branch

The Mediation and Investigation Branch handles all the enforcement functions of the Ontario Human Rights Commission through a network of offices across the province.

The public's first contact with the Commission is through the centralized Inquiry and Intake Unit. This office handles all inquiries and drafts complaints from across the province. The Mediation Office provides mediation services as well as processing Section 34 requests which gives the Commission discretion not to deal with a complaint, if it could have been resolved elsewhere, is filed in bad faith, is out of time or is outside the Commission's legal authority. The Investigation Office undertakes investigation and conciliation of complaints.

The Branch also develops multi-year strategies to effectively manage the Commission's caseload and procedures for the mediation and investigation of complaints. In addition, the Branch assists in carrying out the Commission's public education mandate.

# Policy and Education Branch

The Policy and Education Branch provides leadership and direction for the promotion and advancement of human rights and supports the enforcement of the *Code*.

The Branch ensures the promotion of human rights through compliance with the *Code* and with international human rights obligations. This includes the development of public policy statements, formal guidelines and research on a broad range of human rights and social justice issues. The Branch is responsible for national and international liaison, issues management, media and stakeholder relations, the Web site and publications. It also conducts public consultations and focus groups and represents the Commission on intergovernmental task forces and delegations.

The Branch is responsible for the strategic planning function for public education and communications at a corporate level and for implementing a wide range of educational programs and partnership initiatives, such as public awareness campaigns, presentations, workshops and conferences. The Branch also provides communications and policy support to the Offices of the Chief Commissioner and the Executive Director.

# Legal Services Branch

The Legal Services Branch assists the Commission in fulfilling all aspects of its mandate, including compliance, public education and litigation. Its activities include providing legal advice to senior management, Mediation and Investigation managers and officers concerning investigation and conciliation of cases, providing legal opinions requested by the Commission, and serving as legal counsel to the Commission before the Board of Inquiry and the courts (on matters of judicial review and appeals).

### LIST OF PUBLICATIONS

## Plain Language Documents

Accommodation for Persons With Disabilities 1/95

AIDS and AIDS-Related Illness and the *Code*: Know Your Rights 6/90

Breastfeeding Flyer 9/99

Female Genital Mutilation: Questions and Answers (available in English/French, Arabic/Somali, Swahili/Amharic) 8/99

Guide to the Human Rights Code 10/99

Guide to Mediation Services 5/97

Hiring? A Human Rights Guide 10/99

Human Rights at Work 2/00

If You Receive a Human Rights Complaint
- A Respondent's Guide 7/97

If You Have a Human Rights Complaint
- A Complainant's Guide 6/96

Pregnancy-Before, During and After: Know Your Rights 9/99

Protecting Religious Rights 1/00

Racial Slurs and Harassment and Racial Jokes 3/97

Sexual Harassment and Other Comments or Actions About a Person's Sex 11/96

Sexual Orientation and the *Code*: Know Your Rights 6/90

### **Policies and Guidelines**

Guidelines on the Application of Section 34 of the Ontario *Human Rights Code* 9/96

Guidelines for Assessing Accommodation Requirements for Persons with Disabilities 8/89

Guidelines on Special Programs 11/97

Human Rights Policy in Ontario (All Policies

– Contact Publications Ontario) 12/99

### **Policies and Guidelines**

Policy on Creed and The Accommodation of Religious Observances 10/96

Policy on Discrimination and Language 6/96

Policy on Discrimination Because of Pregnancy 5/99

Policy on Discrimination and Harassment Because of Sexual Orientation 1/00

Policy on Drug & Alcohol Testing 11/96

Policy on Employment-Related Medical Information 6/96

Policy on Female Genital Mutilation (FGM) 4/96

Policy on Height and Weight Requirements 6/96

Policy on HIV/AIDS Related Discrimination 11/96

Policy on Racial Slurs & Harassment & Racial Jokes 6/96

Policy on Requiring a Driver's Licence as a Condition of Employment 6/96

Policy on Scholarships and Awards 8/97

Policy On Sexual Harassment & Inappropriate Gender-Related Comment and Conduct 10/96

### Other Publications

Annual Report (Available from Publications Ontario)

Developing Procedures to Resolve Human Rights Complaints Within Your Organization 6/96

Human Rights Code Poster/Card (Can Be Framed) 5/00

Mediation Services Participant Satisfaction Report 9/99

#### LIST OF PUBLIC EDUCATION ACTIVITIES

### Business/Legal

African Canadian Legal Clinic

AGF Management Limited

Arts, Hospitality and Entertainment Group

Axis Logistics

Canadian Bar Association

Canadian Bar Association of Ontario – Continuing Legal Education

Canadian Lawyers Association for International Human Rights

Canadian Ski Instructors' Alliance Ontario

Coalition of Ottawa Region Providers of Brain Injury Rehabilitation

Commerce Management Group

Community and Legal Aid Services

Gardiner Training and Consulting

Grand Valley Human Resources Professionals

Association of Ontario

Hicks Morley Law Firm

Human Resources Professionals Association of Durham

Of Duffialli

Human Resources Professionals Association of Ontario 2000 Conference

Human Resources Solutions Show

Insight Information Inc.

International Quality and Productivity Centre

Investigations Summit Conference

King's Health Centre

National Congress of Italian Canadians

Regroupement des dirigeant(e)s et

intervenant(e)s francophones de Hamilton

Torkin Manes Cohen & Arbus

#### Community

AIDS Committee of Windsor

Ajax Multicultural Festival

Canadian Citizenship Court -

Toronto Police Service Training Academy

Canadian Hearing Society and Cambrian College

Conege

Community Development Network

Community Dialogue on Racism

Council of Agencies Serving South Asians

Deer Park United Church Group

Dufferin-Peel Employment Co-op Centre

Elimination of Racial Discrimination Day

- Pickering

Hands Across the World

Intercede for the Rights of Caregivers,

Domestic Workers and Newcomers

International Women's Day Fair, Windsor

Islamic Centre of Southwest Ontario

JobsMarket for Persons with Disabilities

League for Human Rights of B'nai Brith

Canada

Meal-Trans

Native Women's Resource Centre

Ontario Association of the Deaf

Ontario Human Rights Commission

Fall Open House

People First

PRIDE Toronto '99

Réseau des femmes du Sud de l'Ontario

Sioux Lookout Anti-Racism Committee

Conference

South Asian Family Support Services

The Career Foundation

Toronto Employment Equity Practitioner's

Association

Toronto Human Rights Film and

Video Festival

Whitby Citizenship Court

#### Education

Bowmanville High School

Collège des Grands Lacs

Don Bosco Catholic High School

Fanshawe Collge, Disability Services

George Brown College

Glendon College

Harbord Collegiate

McGill University Faculty of Law

– Alternative Careers Fair

Niagara College Law Clerk Program

Northern College of Applied Arts & Technology

Ontario Business Educators' Association

Ontario University Employment and Educational Equity Network

Osgoode Hall Law School-Lesbian, Gay, Bisexual and Transgender Caucus

Riverdale Collegiate

Ryerson Polytechnic University

– School of Social Work

Seneca College, School of Legal and Public Administration

Skills for Change (ESL)

St. Denis Elementary School

Toronto District School Board

- Ellesmere LINC

Toronto District School Board
- Yorkminster LINC

University of Toronto, Faculty of Law Summer Mentorship Program

University of Windsor, Faculty of Law

York Catholic District School Board

Yorkhill Elementary School, Thornhill

#### **Public Sector**

Association of Employees for Employment Equity in Ontario Hydro

Association of Municipalities of Ontario

Cabinet Office, Centre for Leadership

Canadian Assocation of Statutory Human Rights Agencies

City of Toronto, Access and Equity Unit

City of Windsor

Conference of Ontario Boards and Agencies

Department of Immigration and Citizenship, Middle Management Conference

Immigation and Citizenship Canada

Ministry of Community and Social Services, Ontario Works

Ministry of Labour, Employment Standards
Call Centre

Ministry of Labour, Office of the Worker Advisor

Ministry of the Attorney General, Office of Dispute Resolution

Niagara Region Police Association

Office of the Information and Privacy Commissioner

Ontario Municipal Board

Region of Peel - Ontario Works

#### International

Commission on Gender Equality, Government of South Africa

Daito-Bunka University, Tokyo, Japan

Diego Portales Law School/Corporación de Salud y Políticas Sociales (Chile)

Nigerian Human Rights Commission

Policy Delegation from India

Sri Lankan Delegation

United Nations High Commission for Human Rights

Table 1: Grounds Cited in Complaints Filed by Region of Registration

Total Number of Complaints Filed = 1,861

| astern         | 45            | 24            | 6     | 52              | 18                | 3                  | 10  | 5              | 9             | 90       | 1                 |                   | 3                    | 5        | 271               | 188                      | 10%                          |
|----------------|---------------|---------------|-------|-----------------|-------------------|--------------------|-----|----------------|---------------|----------|-------------------|-------------------|----------------------|----------|-------------------|--------------------------|------------------------------|
| reater Toronto | 526           | 285           | 46    | 324             | 99                | 37                 | 162 | 43             | 62            | 454      | 15                | 2                 | 4                    | 80       | 2139              | 1292                     | 69%                          |
| Northern       | 42            | 31            | 3     | 12              | 5                 | 2                  | 1   | 2              | 6             | 23       |                   | 1                 |                      | 1        | 129               | 64                       | 3%                           |
| outhwestern    | 74            | 48            | 6     | 102             | 33                | 9                  | 24  | 8              | 17            | 135      | 3                 |                   | 1                    | 19       | 479               | 317                      | 17%                          |
| otal           | 687           | 388           | 61    | 490             | 155               | 51                 | 197 | 58             | 94            | 702      | 19                | 3                 | 8                    | 105      | 3018              | 1861                     | 100%                         |
| ercentage      | 23%           | 13%           | 2%    | 16%             | 5%                | 2%                 | 7%  | 2%             | 3%            | 23%      | 1%                | 0%                | 0%                   | 3%       | 100%              |                          |                              |
|                | Race & Colour | Ethnic Origin | Creed | Sex & Pregnancy | Sexual Harassment | Sexual Orientation | Age | Marital Status | Family Status | Handicap | Public Assistance | Record of Offence | Breach of Settlement | Reprisal | Sum of Categories | Total for all Complaints | Percentage of all Complaints |

lote: Because complaints can involve multiple grounds, the sum by grounds exceeds the total for all complaints filed.

Table 2: Social Area and Grounds Cited in Complaints Filed

Total Number of Complaints Filed = 1,861

| ccommodation          | 33            | 22            | 2     | 8               | 2                 | 1                  | 10  | 11             | 22            | 38       | 18                |                   |                      | 1        | 168               | 103                      | 6%                           |
|-----------------------|---------------|---------------|-------|-----------------|-------------------|--------------------|-----|----------------|---------------|----------|-------------------|-------------------|----------------------|----------|-------------------|--------------------------|------------------------------|
| ervices               | 145           | 83            | 15    | 39              | 6                 | 9                  | 53  | 8              | 20            | 152      | 1                 |                   | 6                    | 7        | 544               | 352                      | 19%                          |
| ontracts              | 8             |               | 2     | 3               |                   | 1                  |     | 1              |               |          |                   |                   |                      | 1        | 16                | 8                        | 0%                           |
| mployment             | 495           | 279           | 40    | 437             | 147               | 39                 | 131 | 38             | 51            | 493      |                   | 3                 | 2                    | 93       | 2248              | 1367                     | 73%                          |
| ocational Association | 6             | 4             | 2     | 3               |                   | 1                  | 3   |                | 1             | 19       |                   |                   |                      | 3        | 42                | 31                       | 2%                           |
| otal                  | 687           | 388           | 61    | 490             | 155               | 51                 | 197 | 58             | 94            | 702      | 19                | 3                 | 8                    | 105      | 3018              | 1861                     | 100%                         |
| ercentage             | 23%           | 13%           | 2%    | 16%             | 5%                | 2%                 | 7%  | 2%             | 3%            | 23%      | 1%                | 0%                | 0%                   | 3%       | 100%              |                          |                              |
|                       | Race & Colour | Ethnic Origin | Creed | Sex & Pregnancy | Sexual Harassment | Sexual Orientation | Age | Marital Status | Family Status | Handicap | Public Assistance | Record of Offence | Breach of Settlement | Reprisal | Sum of Categories | Total for all Complaints | Percentage of all Complaints |

**lote:** Because complaints can involve multiple grounds, the sum by grounds exceeds the total for all complaints filed.

Table 3: Settlements Effected by Ground in Cases Mediated in 1999/00

| Race & Colour   | \$ 1,214,099.36     | 135                            | \$ 8,993.33  |
|---|---------------------|--------------------------------|--------------|
| Ethnic Origin   | \$ 616,095.94       | 80                             | \$ 7,701.20  |
| Creed   | \$ 45,585.00        | 14                             | \$ 3,256.07  |
| Sex & Pregnancy   | \$ 639,502.06       | 120                            | \$ 5,329.18  |
| Sexual Harassment   | \$ 235,728.00       | 38                             | \$ 6,203.37  |
| Sexual Orientation  | \$ 347,400.00       | 16                             | \$ 21,712.50 |
| Age   | \$ 225,844.39       | 21                             | \$ 10,754.49 |
| Marital Status  | \$ 73,539.81        | 8                              | \$ 9,192.48  |
| Family Status   | \$ 19,440.00        | 10                             | \$ 1,944.00  |
| Handicap  | \$ 1,041,473.65     | 162                            | \$ 6,428.85  |
| Public Assistance   | \$ 4,500.00         | 5                              | \$ 900.00    |
| Reprisal  | \$ 356,253.00       | 46                             | \$ 7,744.63  |
| Not Classified  | \$ 145,407.18       | 26                             | \$ 5,592.58  |
| Total for all complaints  | \$ 4,964,868.39     | 681                            | \$ 7,290.56  |
| Note: Because complaints can involve multiple grounds, the sum of monetary damages by ground exceeds the sum of monetary damages by complaints. | Monetary<br>Damages | Number<br>Receiving<br>Damages | Average      |

## Settlements Effected by Ground in Cases Investigated in 1999/00

| Race & Colour   | \$<br>32,500.00     | 8                              | \$ 4,062.50 |
|---|---------------------|--------------------------------|-------------|
| Ethnic Origin   | \$<br>3,500.00      | 1                              | \$ 3,500.00 |
| Creed   | \$                  |                                |             |
| Sex & Pregnancy   | \$<br>88,150.00     | 11                             | \$ 8,013.64 |
| Sexual Harassment   | \$<br>7,500.00      | 3                              | \$ 2,500.00 |
| Sexual Orientation  | \$<br>4 000.00      | 1                              | \$ 4,000.00 |
| Age   | \$<br>2,750.00      | 2                              | \$ 1,375.00 |
| Marital Status  | \$<br>3,750.00      | 2                              | \$ 1,875.00 |
| Family Status   | \$<br>3,000.00      | 1                              | \$ 3,000.00 |
| Handicap .  | \$<br>70,650.00     | 15                             | \$ 4,710.00 |
| Public Assistance   | \$<br>-             |                                |             |
| Reprisal  | \$<br>6,750.00      | 2                              | \$ 3,375.00 |
| Not Classified  | \$<br>1,280.00      | 1                              | \$ 1,280.00 |
| Total for all complaints  | \$<br>223,830.00    | 47                             | \$ 4,762.34 |
| Note: Because complaints can involve multiple grounds, the sum of monetary damages by ground exceeds the sum of monetary damages by complaints. | Monetary<br>Damages | Number<br>Receiving<br>Damages | Average     |

Table 4: Complaints Closed by Disposition and Ground
Total Number of Complaints Closed = 2,305

| Dismissed                    | 307           | 162           | 18    | 75              | 15                | 16                 | 115 | 12             | 18            | 115      | 9                 |                   |                      | 25       | 887               | 462                      | 20%                          |
|------------------------------|---------------|---------------|-------|-----------------|-------------------|--------------------|-----|----------------|---------------|----------|-------------------|-------------------|----------------------|----------|-------------------|--------------------------|------------------------------|
| Not Dealt With (Sect. 34)    | 141           | 83            | 27    | 44              | 10                | 13                 | 30  | 7              | 8             | 132      | 3                 | 2                 |                      | 20       | 520               | 281                      | 12%                          |
| Referred to Board of Inquiry | 49            | 15            | 1     | 22              | 5                 | 4                  | 5   | 1              | 3             | 33       | 2                 | 1                 | 1                    | 4        | 146               | 92                       | 4%                           |
| Settled                      | 320           | 174           | 35    | 260             | 85                | 29                 | 62  | 26             | 31            | 360      | 10                | 2                 | 1                    | 52       | 1447              | 897                      | 39%                          |
| Withdrawn                    | 209           | 128           | 17    | 170             | 48                | 24                 | 47  | 19             | 21            | 194      | 6                 | 1                 |                      | 37       | 921               | 573                      | 25%                          |
| Total                        | 1026          | 562           | 98    | 571             | 163               | 86                 | 259 | 65             | 81            | 834      | 30                | 6                 | 2                    | 138      | 3921              | 2305                     | 100%                         |
| Percentage                   | 26%           | 14%           | 2%    | 15%             | 4%                | 2%                 | 7%  | 2%             | 2%            | 21%      | 1%                | 0%                | 0%                   | 4%       | 100%              |                          |                              |
|                              | Race & Colour | Ethnic Origin | Creed | Sex & Pregnancy | Sexual Harassment | Sexual Orientation | Age | Marital Status | Family Status | Handicap | Public Assistance | Record of Offence | Breach of Settlement | Reprisal | Sum of Categories | Total for all Complaints | Percentage of all Complaints |

Note: Because complaints can involve multiple grounds, the sum by grounds exceeds the total for all complaints closed.

Table 5: Complaints Closed by Disposition and Social Area
Total Number of Complaints Closed = 2,305

| Dismissed                         | 69            | 224      | 3        | 584        | 3                      | 4    | 887               | 462                      | 20%                          |
|-----------------------------------|---------------|----------|----------|------------|------------------------|------|-------------------|--------------------------|------------------------------|
| Not Dealt With (Section 34)       | 21            | 178      | 4        | 291        | 26                     |      | 520               | 281                      | 12%                          |
| Referred to Board of Inquiry      | 10            | 18       | 1        | 116        |                        | 1    | 146               | 92                       | 4%                           |
| Settled                           | 61            | 159      |          | 1225       | 2                      |      | 1447              | 897                      | 39%                          |
| Withdrawn                         | 57            | 124      |          | 717        | 17                     | 6    | 921               | 573                      | 25%                          |
| Total (1975) Start Company (1975) | 218           | 703      | 8        | 2933       | 48                     | 11   | 3921              | 2305                     | 100%                         |
| Percentage                        | 6%            | 18%      | 0%       | 75%        | 1%                     | 0%   | 100%              |                          |                              |
|                                   | Accommodation | Services | Contract | Employment | Vocational Association | None | Sum of Categories | Total for all Complaints | Percentage of all Complaints |

Note: Because complaints can involve multiple grounds, the sum by grounds exceeds the total for all complaints closed.

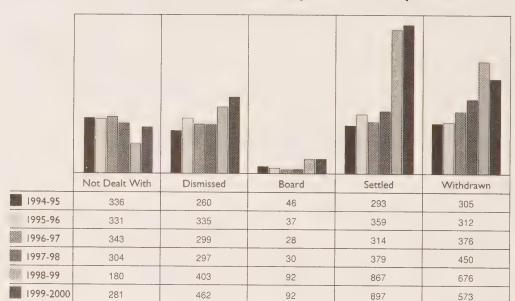
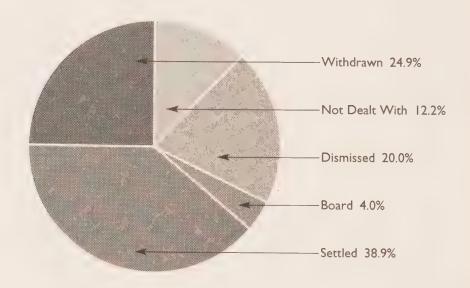


Table 6: Complaints Closed by Year and Disposition

Table 7: OHRC Disposition of Closings
Closing Dispositions - 1999/00 = 2,305



## BOARD OF INQUIRY DECISIONS AND SETTLEMENTS

#### Decisions

#### **Breach of Settlement**

Brad Bergman v. 474134 Ontario Limited, c.o.b. as Westwind Inn, Kristi Jensen

#### Ethnic Origin

Quereshi v. The Board of Education for the City of Toronto

Alfred Abouchar v. Metropolitan Toronto School Board et al.

#### Handicap

Bob Brown v. Famous Players Inc. and Capital Square Theatre

#### Race

Michael McKinnon v. Her Majesty the Queen in Right of Ontario, Ministry of Correctional Services et al.

#### Sexual Harassment

Nicole Curling v. Alexander Torimiro

#### Sexual Orientation

James Moffatt v. Kinark Child & Family Services et al.

Ray Brillinger v. the Canadian Lesbian and Gay Archives and Scott Brockie and Imaging Excellence Inc.

#### Sexual Solicitation

Christian Bryan v. PMI Food Equipment et al.

#### Settlements

#### Age

Ephraim Stephenson v. Select Commercial Cleaning Inc.

#### Creed

Luise Wood, Anne McMahon, Ailene George, Teresa Bushby, Una Clennon, Joanne Van Halteren, Janice Newman and Marion Hurlburt v. Markham Stouffville Hospital, Marilyn Bruner, Ann Kennie, Joanne MacLean

Hilton Hadaway v. Belmont Properties Inc.

#### **Ethnic Origin**

Mark Harris v. Silkwood Products

#### **Family Status**

Susan Ruddick v. Seventy-Five Scarborough Road Limited

Leah Khan, Ahmed Ali Khan v. Satya Nagpal Maureen Callaghan and Bruce Porter v. Echo Valley Resorts Ltd.

Emma Ribic v. Three R Management Ltd.

#### Handicap

William C. Taylor v. McFadden's Hardwood and Hardware Ltd. and Elmer DeMerchant

Nicholas Meloche by his Litigation Guardian Theresa Kales v. Greater Essex County District School Board

Donat Dagenais v. Farmboy Market Limited, John Strano, Dave Gozzard and Andrew Burdett and OHRC

George Widomski v. Dofasco Inc.

Art Levesque v. INCO Limited, Ontario Division

David Pritchard v. Factory Mutual System

Dimetrios Vargianitis v. Pepi's Drive In Restaurant and Spyros Sventzouris

#### Settlements

Delano Brown v. Scarborough Board of Education and John Crichton

Anthony Gardiner v. Turning Point Inc. and Board of Directors for Turning Point Inc. and James R. Pettit

Eddy Rusling v. Windsor Board of Education and Greater Essex County District School Board

Terry Lynn Wannamaker v. Town Line Processing Ltd.

Estate of Doug Shaver v. Toronto East General and Orthopaedic Hospital, Inc.

David Rajotte v. The Canadian Surety Company Terry Thompson v. Lear Seating Company and Tim Tracey

#### Marital Status

Janet Lynn Miller v. David Felton, Paul Beneteau, and 1138859 Ontario Inc., operating as Stonewalls Steakhouse & Bar

#### Race

Neville Grant v. 700219 Ontario Inc. c.o.b. The Little Pie Shoppe, Herbert Neumann; Joseph Shkedy; Norman Wagner

Thomas Darill Jean-Pierre v. Concord Elevators Inc., John Stephens, and Jim Stephens

Lulu Hamilton-Awuah v. Municipal Bankers Corporation, Municipal Financial Leasing Corporation, Sandra Watzl, Gloria Jackson and Jeff Brown

Chan Veeren v. Metropolitan Toronto Housing Authority and Mr. Robert Ballantyne

Nicolas Calliste v. Peniche Carpentry Construction and Joaquim Martin

Alvin Jackson v. Mount Pleasant Cemetery

Jahangir Mirza v. Quebecor Litho Plus, a division of Quebecor Printing Inc., formerly Litho Plus Inc., Robert Corke, Jim Francis and Derrick Robson Jules Greenberg v. Bobcaygeon and District Lions Club

Natalie Morgan v. Swiss Chalet

#### Receipt of Public Assistance

Tammy Harling, Aline Duquette, Colleen Delage v. New Era Homes Ltd.

James Cameron v. Apollco Properties Ltd.

#### Sex

Cheryl Todorowski v. Craig Hamill

Nancy Suchard v. Rick Wood and Canadian Owned Operated Taxi Ltd.

Neelima Goel v. Hardev Singh

Nancy Suchard v. Merv Reynard

Garth Caron v. ServPlus Inc., c.o.b. The Housesitters Canada, David Ballet and Cameron Dalsto

Cindy Rock v. Hound and Heather Restaurant

#### Sexual Harassment

Maria Da Penha Correia v. Januario Barros and Casa Abril Em Portugal

Mary Sobrocchi v. Piscelli & Faieta and Nichola Enzo Faieta

Melanie Camacho, Brenda Jane Brendia, Ashley LeRoux, and Rachel Luther v. Fairdinkum Aussie Outfitters and Henry Allon

Patricia Musty v. Meridian Magnesium Products Limited

#### Sexual Orientation

H. A. (Toni) Vanderwiel v. 1025091 Ontario Limited, c.o.b. as Godfather's Pizza/Tri Group Management, Allan N. MacDonald and Sharon Baker

## Divisional Court (Judicial Review)

#### Age

Dennis Kennedy v. OHRC

#### Handicap

McKenzie Forest Products Inc. v. OHRC and Adam Tilberg, Board of Inquiry (Human Rights) and Attorney General of Ontario.

Jette Steward v. OHRC, 3M Canada Inc., CAW, Local 27 and Ministry of the Attorney General

#### Race

Alicia Payne v. OHRC and Otsuka
Pharmaceutical Co. Ltd. and Mr. Okada and
Metro Toronto Convention Centre, XXVIIth
International Congress of Opthalmology,
Canadian Ophthalmological Society, Intertask
Group of Companies, Paul Akehurst (Sr.) and
Leanne Akehurst

Mike Naraine v. OHRC and Ford Motor Company of Canada Ltd., Gord Batstone, George Goyton, Andy Barr, Dobson, Bob Darogan and Mike Teigh

Anthony Weekes v. OHRC and Attorney General of Ontario

Guillaume Kibale v. OHRC.

Wanxia Liao v. OHRC and University of Toronto and David Waterhouse

#### Sex

Colleen Pritchard v. OHRC and Sears Canada Inc.

## Divisional Court (Appeal)

#### Race

Khaletun Khalil v. OHRC and Ontario College of Art, Jan Van Kampen, Norman Hathaway

Wilfred Etienne v. Westinghouse of Canada Limited and OHRC

#### Receipt of Public Assistance

Dawn Kearney v. J. L. and Catarina Luis

#### Sex

Colleen Pritchard v. OHRC and Sears Canada Inc.

## Court of Appeal

#### Creed

Nuri J. Jazairi v. OHRC, York University, Harry Arthurs, Senate Committee on Tenure and Promotion, Faculty Committee on Tenure and Promotion, Tom Traves, John C. Evans, Elie Appelbaum and Roger Lathan

#### Handicap

McKenzie Forest Products Inc. v. OHRC and Adam Tilberg, Board of Inquiry (Human Rights) and Attorney General of Ontario.

#### Race

Marcia Robertson v. OHRC and Maple Leaf Foods Inc.

Wanxia Liao v. OHRC and University of Toronto and David Waterhouse

#### Sex

Colleen Pritchard v. OHRC and Sears Canada Inc.

## Supreme Court of Canada

Sexual Orientation

M. v. H.

#### FINANCIAL STATEMENT

## 1999-2000 Actual Year-End Financial Position (\$'000)

|  | 1999-00<br>Printed<br>Estimates | Year-End<br>Budget<br>Adjustments | Revised<br>Budget<br>Mar. 31, 2000 | Actual<br>Expenditure<br>Mar. 31, 2000 | 1999-00<br>Interim<br>Year-End | Variance<br>% of Revised<br>Budget |
|--|---------------------------------|-----------------------------------|------------------------------------|--|--------------------------------|------------------------------------|
| Salaries & Wages                       | 7,656.1                         | 152.4                             | 7,808.5                            | 6,979.3                                | 829.2                          | 7.1                                |
| Employee Benefits                      | 1,418.6                         | 342.8                             | 1,761.4                            | 1,650.3                                | 111.1                          | 1.0                                |
| Other Direct Operating Expenses (ODOE) | 2,087.9                         |                                   | 2,087.9                            | 3,027.7                                | (939.8)                        | (8.1)                              |
|  | 11,162.6                        | 495.2                             | 11,657.8                           | 11,657.3                               | 0.5                            | 0.0                                |

Note: The OHRC 1999-00 budget, with Management Board approval, was increased by \$495.2 at year-end (for Labour Adjustment Costs [LAC]).

## L'ÉTAT FINANCIER

## Situation financière à la fin de l'exercice 1999-2000 (en milliers de dollars)

|  | 11,162.6   | 2.264                               | 8.739,11                            | 11,657.3                                | 3.0                                  | 0.0  |
|--|------------|-------------------------------------|-------------------------------------|---|--------------------------------------|--|
| Autres dépenses<br>de fonctionnement<br>direct | 6.780,2    |                                     | 6.780,2                             | 3,027.7                                 | (8.659)                              | (1.8)  |
| Avantages sociaux                              | 8.814,t    | 342.8                               | 4.187,1                             | 1,650.3                                 | 1,111                                | 0.1  |
| Salaires et traitement                         | 1.656.1    | 152.4                               | 3.808,7                             | 6.676,8                                 | 2.628                                | 1.7  |
|  | Budget des | Ajustements<br>nfl ab<br>d'exercice | Budget<br>révisé au<br>31 mars 2000 | Dépenses<br>réelles au<br>3 I mars 2000 | Chiffres de fin d'exercice 1999-2000 | Écart en %<br>par rapport<br>au budget<br>révisé |

Remarque: Le budget de 1999-2000 de la Commission a été majoré, avec l'approbation du Conseil de gestion, de 495,2 \$ en fin d'exercice (aux fins de la renconversion de la main-d'œuvre).

## (spbdels) Cour divisionnaire

Timited and OHRC Wilfred Etienne v. Westinghouse of Canada of Art, Jan Van Kampen, Norman Hathaway Khaletun Khalil v. OHRC and Ontario College Race

Etat d'assisté social

Dawn Kearney v. J.L. and Catarina Luis

Colleen Pritchard v. OHRC and Sears Canada Inc.

## Cour d'appel

Croyance

Appelbaum and Roger Lathan Promotion, Tom Traves, John C. Evans, Elie Promotion, Faculty Committee on Tenure and Harry Arthurs, Senate Committee on Tenure and Nuri J. Jazairi v. OHRC, York University,

and Attorney General of Ontario. Adam Tilberg, Board of Inquiry (Human Rights) McKenzie Forest Products Inc. v. OHRC and Handicap

Foods Inc. Marcia Robertson v. OHRC and Maple Leaf

Toronto and David Waterhouse Wanxia Liao v. OHRC and University of

Colleen Pritchard v. OHRC and Sears Canada Inc.

Orientation sexuelle Cour suprême du Canada

M. v. H.

## (avisioibu) (requêtes en révision Cour divisionnaire

agA

Dennis Kennedy v. OHRC

Handicap

and Attorney General of Ontario. Adam Tilberg, Board of Inquiry (Human Rights) McKenzie Forest Products Inc. v. OHRC and

Local 27 and Ministry of the Attorney General Jette Steward v. OHRC, 3M Canada Inc., CAW,

## Race

Teanne Akehurst Group of Companies, Paul Akehurst (Sr.) and Canadian Ophthalmological Society, Intertask International Congress of Opthalmology, Metro Toronto Convention Centre, XXVIIth Pharmaceutical Co. Ltd. and Mr. Okada and Alicia Payne v. OHRC and Otsuka

Wike I eigh Goyton, Andy Barr, Dobson, Bob Darogan and Company of Canada Ltd., Gord Batstone, George Mike Naraine v. OHRC and Ford Motor

Anthony Weekes v. OHRC and Attorney General

ornarnO to

Guillaume Kibale v. OHRC

Toronto and David Waterhouse Wanxia Liao v. OHRC and University of

Colleen Pritchard v. OHRC and Sears Canada Inc.

## Règlements

Lions Club Education and John Crichton Delano Brown v. Scarborough Board of

James R. Pettit Board of Directors for Turning Point Inc. and Anthony Gardiner v. Turning Point Inc. and

and Greater Essex County District School Board Eddy Rusling v. Windsor Board of Education

Terry Lynn Wannamaker v. Town Line

Estate of Doug Shaver v. Toronto East General Processing Ltd.

and Orthopaedic Hospital, Inc.

Rupdung David Rajotte v. The Canadian Surety

Tim Iracey Terry Thompson v. Lear Seating Company and

## Etat matrimonial

as Stonewalls Steakhouse & Bar Beneteau, and 1138859 Ontario Inc., operating Janet Lynn Miller v. David Felton, Paul

Inc., John Stephens, and Jim Stephens Thomas Darill Jean-Pierre v. Concord Elevators Joseph Shkedy; Norman Wagner The Little Pie Shoppe, Herbert Neumann; Neville Grant v. 700219 Ontario Inc. c.o.b.

Corporation, Sandra Watzl, Gloria Jackson and Corporation, Municipal Financial Leasing Lulu Hamilton-Awuah v. Municipal Bankers

Nicolas Calliste v. Peniche Carpentry Authority and Mr. Robert Ballantyne Chan Veeren v. Metropolitan Toronto Housing umong ffas

Jahangir Mirza v. Quebecor Litho Plus, a divi-Alvin Jackson v. Mount Pleasant Cemetery Construction and Joaquim Martin

Plus Inc., Robert Corke, Jim Francis and odic of Quebecor Printing Inc., formerly Litho

Derrick Robson

Jules Greenberg v. Bobcaygeon and District

Natalie Morgan v. Swiss Chalet

État d'assisté social

Delage v. New Era Homes Ltd. Tammy Harling, Aline Duquette, Colleen

James Cameron v. Apollco Properties Ltd.

Sexe

Cheryl Todorowski v. Craig Hamill

Owned Operated Taxi Ltd. Nancy Suchard v. Rick Wood and Canadian

Neelima Goel v. Hardev Singh

Nancy Suchard v. Merv Reynard

Garth Caron v. ServPlus Inc., c.o.b. The

Housesitters Canada, David Ballet and

Cindy Rock v. Hound and Heather Restaurant

Harcèlement sexuel

Cameron Dalsto

and Casa Abril Em Portugal Maria Da Penha Correia v. Januario Barros

Enzo Faieta Mary Sobrocchi v. Piscelli & Faieta and Nichola

Lekoux, and Rachel Luther v. Fairdinkum Melanie Camacho, Brenda Jane Brendia, Ashley

Aussie Outstiters and Henry Allon

Products Limited Patricia Musty v. Meridian Magnesium

Orientation sexuelle

Baker Management, Allan N. MacDonald and Sharon Limited, c.o.b. as Godfather's Pizzal Tri Group H. A. (Toni) Vanderwiel v. 1025091 Ontario

Commission ontarienne des droits de la personne

## DÉCISIONS ET RÉGLEMENTS DES COMMISSIONS D'ENQUÊTE

## Règlements

**agA** 

Cleaning Inc. Ephraim Stephenson v. Select Commercial

Сгоуапсе

Marilyn Bruner, Ann Kennie, Joanne MacLean Hurlburt v. Markham Stouffville Hospital, Halteren, Janice Newman and Marion Teresa Bushby, Una Clennon, Joanne Van Luise Wood, Anne McMahon, Ailene George,

Hilton Hadaway v. Belmont Properties Inc.

Origine ethnique

Mark Harris v. Silkwood Products

Road Limited Susan Ruddick v. Seventy-Five Scarborough Etat familial

Leab Khan, Ahmed Ali Khan v. Sarya Nagpal

Valley Resorts Ltd. Maureen Callaghan and Bruce Porter v. Echo

Emma Ribic v. Three R Management Ltd.

Handicap

and Hardware Ltd. and Elmer DeMerchant William C. Taylor v. McFadden's Hardwood

Theresa Kales v. Greater Essex County District Nicholas Meloche by his Litigation Guardian

Donat Dagenais v. Farmboy Market Limited, School Board

Burdett and OHRC John Strano, Dave Gozzard and Andrew

George Widomski v. Dofasco Inc.

uoisinia Art Levesque v. INCO Limited, Ontario

David Pritchard v. Factory Mutual System

Restaurant and Spyros SventzourissA Dimetrios Vargianitis v. Pepi's Drive In

Décisions

Violation du règlement intervenu

c.o.b. as Westwind Inn, Kristi Jensen Brad Bergman v. 474134 Ontario Limited,

Origine ethnique

ornoro I fo Quereshi v. The Board of Education for the City

Alfred Abouchar v. Metropolitan Toronto School

Board et al.

Bob Brown v. Famous Players Inc. and Capital Handicap

Square Theatre

Race

Services et al. Right of Ontario, Ministry of Correctional Michael McKinnon v. Her Majesty the Queen in

Harcèlement sexuel

Nicole Curling v. Alexander Torimiro

Orientation sexuelle

צבנתוכבו בג מך. James Mosfatt v. Kinark Child & Family

Ray Brillinger v. the Canadian Lesbian and Gay

Christian Bryan v. PMI Food Equipment et al.

Excellence Inc. Archives and Scott Brockie and Imaging

Avances sexuelles

Rapport annuel 1999-2000

Tableau 6: Dossiers fermés, par exercices et décisions

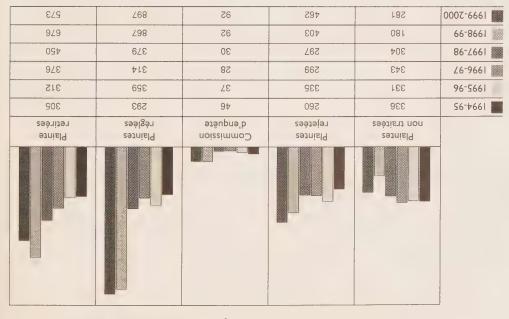
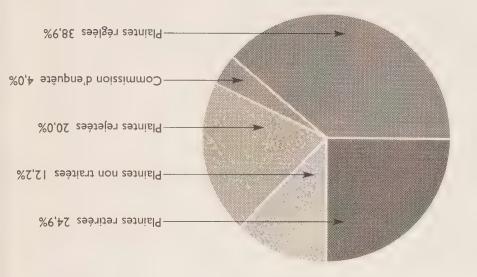


Tableau 7: Dossiers fermés, par décisions

Dossiers fermés en 1999-2000 = 2305



## Tableau 4: Dossiers fermés, par motifs cités et décisions Nombre total des dossiers fermés = 2 305

| Pourcentage du total des plaintes | Total des dossiers | Total des mofifs | Représailles | Violation du règlement intervenu | Casier judiciaire | État d'assisté social | Handicap | État familial | État matrimonial | Âge | Orientation sexuelle | Harcèlement sexuel | Sexe et grossesse | Croyance | Origine ethnique | Race et couleur |   |
|-----------------------------------|--------------------|------------------|--------------|----------------------------------|-------------------|-----------------------|----------|---------------|------------------|-----|----------------------|--------------------|-------------------|----------|------------------|-----------------|---|
|                                   |                    | %00L             | %t           | %0                               | %0                | %1                    | 51%      | %7            | %7               | %1  | %7                   | %t                 | 12%               | %7       | % <b>†</b> 1     | %97             | Pourcentage                                   |
| %001                              | 2305               | 1268             | 138          | S                                | 9                 | 30                    | 834      | 18            | 99               | 528 | 98                   | £91                | 149               | 86       | 299              | 1026            | Total   |
| %97                               | 873                | 126              | 28           |                                  | ŀ                 | 9                     | 194      | 12            | 61               | ΔÞ  | 24                   | 84                 | 021               | 41       | 128              | 509             | Plaintes retirées                             |
| %68                               | 768                | 7441             | 25           | Į.                               | 2                 | 10                    | 360      | 15            | 56               | 29  | 58                   | 98                 | 560               | 32       | 174              | 320             | Plaintes réglées                              |
| % <del>\</del>                    | 26                 | 951              | Þ            | Ļ                                | 1                 | 2                     | 33       | ε             | L                | 9   | Þ                    | 9                  | 22                | L        | ٩١               | 6t <sup>-</sup> | Plaintes renvoyées à une commission d'enquête |
| 15%                               | 182                | 920              | 50           |                                  | 2                 | ε                     | 132      | 8             | 7                | 30  | 13                   | 01                 | b b               | 72       | 83               | 141             | Plaintes non traitées (article 34)            |
| %0Z                               | 797                | 788              | 52           |                                  |                   | 6                     | 311      | 81            | 12               | 115 | 91                   | 91                 | 94                | 81       | 162              | 208             | Plaintes rejetées                             |

Remarque: Vu qu'une plainte peut être fondée sur plusieurs motifs de discrimination illicites, le total des motifs est supérieur au total de dossiers fermés.

## Tableau 5: Dossiers fermés, par dispositions invoquées et décisionsNombre total des dossiers fermés = 2 305

|   | Adaptation | Services | Contrats | Emploi | Associations professionnelles | Aucune disposition | Total des dispositions | Total des dossiers | Pourcentage du total des dossiers |
|---|------------|----------|----------|--------|-------------------------------|--------------------|------------------------|--------------------|-----------------------------------|
| Pourcentage                                   | %9         | 18%      | %0       | %92    | %1                            | %0                 | %001                   |                    |                                   |
| latoT   | \$18       | 203      | 8        | 2933   | 85                            | 11                 | 1268                   | 330E               | %00L                              |
| Plaintes retirées                             | <b>49</b>  | 124      |          | 111    | 41                            | 9                  | 126                    | 673                | 72%                               |
| Plaintes réglées                              | 19         | 691      |          | 1552   | 2                             |                    | LVVI.                  | <b>∠68</b>         | %68                               |
| Plaintes renvoyées à une commission d'enquête | 01         | 81       | L        | 911    |                               | L                  | 971                    | 36                 | %t                                |
| Plaintes non traitées (article 34)            | 12         | 871      | Þ        | 162    | 56                            |                    | 950                    | 182                | 15%                               |
| Plaintes rejetées                             | 69         | 224      | ε        | 189    | ε                             | †                  | 788                    | 462                | 50%                               |

Remarque: Vu qu'une plainte peut être fondée sur plusieurs motifs de discrimination illicites, le total des dispositions est supérieur au total de dossiers fermés.

## Tableau 3: Règlements intervenus en 1999-2000 à l'issue d'une médiation, par motifs cités dans les plaintes

| Moyenne      | personnes<br>indemnisées | Dommages-<br>intérêts | Remarque: Vu que les plaintes peuvent être fondées sur plusieurs motifs, le total des dommages-intérêts par motif dépasse le total des dommages-intérêts versés pour toutes les plaintes. |
|--------------|--------------------------|-----------------------|---|
| \$ 99'062'4  | 189                      | \$ 65,688,486,4       | Total pour toutes les plaintes  |
| \$ 89'269'9  | 56                       | \$ 81.704,341         | Non classifié   |
| \$ 69.447,7  | 97                       | \$ 00.552,00 \$       | Représailles  |
| \$ 00,006    | 9                        | \$ 00.002,4           | État d'assisté social   |
| \$ 58.856,8  | 162                      | \$ 39.674,140,1       | Handicap  |
| \$ 00.446,1  | 10                       | \$ 00.044,61          | Leilimet ses Écat familial  |
| \$ 84.597,48 | 8                        | \$ 18.668,67          | État matrimonial  |
| \$ 67"792"01 | 12                       | \$ 65.44.39 \$        | - 9gÅ   |
| \$1,712.50\$ | 91                       | \$ 00.004,748         | Orientation sexuel  |
| \$ 76,605,8  | 38                       | \$35,728.00 \$        | Harcèlement sexuel  |
| \$ 81.626,8  | 120                      | \$ 90.502,668         | Sexe et grossesse   |
| \$ 70.885,6  | ٦١                       | \$ 00.888,84          | Сгоуапсе  |
| \$ 02.107,7  | 08                       | \$ 76.360,313         | Origine ethnique  |
| \$ 66.566,8  | 361                      | \$ 96.660,412,1       | Race et couleur   |

## Règlements intervenus en 1999-2000, à l'issue d'une enquête, par motifs cités dans les plaintes

| Moyemne     | personnes<br>indemnisées | Dommages-<br>intérêts | Remarque: Vu que les plaintes peuvent être fondées sur plusieurs motifs, le total des dommages-intérêts par motif dépasse le total des dommages-intérêts versés pour toutes les plaintes. |
|-------------|--------------------------|-----------------------|---|
| 4,762.34 \$ | 20                       | \$ 00.068.622         | Total pour toutes les plaintes  |
| 1,280.00 \$ | ŀ                        | \$ 00.082,1           | Non classifié   |
| \$ 00.876,8 | 2                        | \$ 00.037,8           | Représailles  |
|             |                          | -                     | État d'assisté social   |
| \$ 00.017,4 | 15                       | \$ 00.039,07          | Handicap  |
| \$ 00'000'8 | ŀ                        | \$ 00.000,8           | État familial   |
| \$ 00.878,1 | 2                        | \$ 00.037,8           | État matrimonial  |
| \$ 00.875,1 | 2                        | \$,750.00 \$          | 98Å   |
| \$ 00.000,4 | 1                        | \$ 00.000,4           | Orientation sexuel  |
| \$ 00.008,2 | 3                        | \$ 00.003,7           | Harcèlement sexuel  |
| \$ 19.610,8 | 11                       | \$ 00.031,88          | Sexe et grossesse   |
|             |                          | -                     | Сгоуапсе  |
| \$ 00.002,6 | ŀ                        | \$ 00.003,5           | Origine ethnique  |
| \$ 097290*  | 8                        | \$ 00.003,25          | Race et couleur   |

## Tableau I: Motifs cités dans les plaintes déposées, par région Nombre total de plaintes déposées = 1861

| Pourcentage du total des plaintes | Total des plaintes | Total des mofts | Représailles | Violation du règlement intervenu | Casier judiciaire | État d'assisté social | Handicap | État familial | État matrimonial | Âge  | Orientation sexuelle | Harcèlement sexuel | Sexe et grossesse | Croyance | Origine ethnique | Race et couleur |               |
|-----------------------------------|--------------------|-----------------|--------------|----------------------------------|-------------------|-----------------------|----------|---------------|------------------|------|----------------------|--------------------|-------------------|----------|------------------|-----------------|---------------|
|                                   |                    | %00L            | %8           | %0                               | %0                | %1                    | 23%      | %8            | %7               | %4   | %7                   | %9                 | %9L               | %7       | 13%              | 23%             | Pourcentage   |
| %001                              | 1981               | 810£            | 901          | 8                                | ε                 | 61                    | 202      | <b>76</b>     | 89               | 46 L | LS                   | 99 L               | 06 <del>†</del>   | 19       | 986              | 788             | latoT         |
| % 21                              | 317                | 674             | 61           | ŀ                                |                   | ε                     | 135      | 41            | 8                | 24   | 6                    | 33                 | 102               | 9        | 84               | ÞΔ              | Sud-Duest     |
| %8                                | <del>7</del> 9     | 159             | Ļ            |                                  | 1                 |                       | 23       | 9             | 2                | L    | 2                    | g                  | 12                | 3        | 15               | 42              | Nord          |
| %69                               | 1292               | 2139            | 08           | Þ                                | 2                 | 91                    | †9†      | 29            | 43               | 162  | <b>Δ</b> ε           | 66                 | 324               | 97       | 585              | 929             | Grand Toronto |
| %01                               | 188                | 271             | 9            | ε                                |                   | ļ.                    | 06       | 6             | g                | 10   | ε                    | 81                 | 25                | 9        | 54               | St              | Est           |

Remarque: Vu qu'une plainte peut être fondée sur plusieurs motifs de discrimination illicites, le total des motifs est supérieur au total de plaintes déposées.

## Tableau 2: Plaintes déposées, par dispositions invoquées et motifs cités Nombre total de plaintes déposées = 1861

| Pourcentage du total des plaintes | Total des plaintes | Total des motifs | Représailles | Violation du règlement intervenu | Casier judiciaire | État d'assisté social | Handicap | État familial  | État matrimonial | Âge | Orientation sexuelle | Harcèlement sexuel | Sexe et grossesse | Croyance | Origine ethnique | Race et couleur |                   |
|-----------------------------------|--------------------|------------------|--------------|----------------------------------|-------------------|-----------------------|----------|----------------|------------------|-----|----------------------|--------------------|-------------------|----------|------------------|-----------------|-------------------|
|                                   |                    | %001             | %8           | %0                               | %0                | %1                    | 23%      | %8             | %7               | %4  | %7                   | %9                 | %9L               | %7       | 13%              | 23%             | Pourcentage       |
| %001                              | 1881               | 8108             | 102          | 8                                | ε                 | 61                    | 202      | <del>7</del> 6 | 85               | 461 | 19                   | SEL                | 067               | 19       | 388              | <b>789</b>      | Total             |
| %7                                | 18                 | 24               | ε            |                                  |                   |                       | 61       | ļ              |                  | ε   | ŀ                    |                    | ε                 | 2        | Þ                | 9               | Association prof. |
| %82                               | 1367               | 5548             | 86           | 2                                | ε                 |                       | €6⊅      | 13             | 38               | 131 | 68                   | 741                | <b>∠</b> E⊅       | 07       | 279              | 967             | Emploi            |
| %0                                | 8                  | 91               | 1            |                                  |                   |                       |          |                | L                |     | L                    |                    | ε                 | 2        |                  | 8               | Contrats          |
| %61                               | 352                | <b>77</b> 9      | 7            | 9                                |                   | L                     | 152      | 20             | 8                | 53  | 6                    | 9                  | 68                | 91       | 83               | 145             | Services          |
| %9                                | 103                | 891              | L            |                                  |                   | 81                    | 38       | 22             | 11               | 10  | L                    | 2                  | 8                 | 2        | 22               | 33              | Adaptation        |

Remarque: Vu qu'une plainte peut être fondée sur plusieurs motifs de discrimination illicites, le total des motifs est supérieur au total de plaintes déposées.

## Secteur public

Association canadienne des commissions et conseils des droits de la personne Association des municipalités de l'Ontario Association of Employees for Employment Equity in Ontario Hydro

Buteau du commissaire à l'information et

à la protection de la vie privée Citoyenneté et Immigration Canada, Citoyenneté et Immigration Canada,

Conférence pour les cadres intermédiaires

City of Toronto, Access and Equity Unit

Commission des affaires municipales de l'Ontario

Conference of Ontario Boards and Agencies Conseil des ministres, Centre de développement du leadership

Ministère des Services sociaux et communautaires – Ontario au travail

Ministère du Procureur général – Bureau de règlement des différends

Ministère du Travail – Bureau des conseillers des travailleurs

Ministère du Travail – centre d'appel des normes d'emploi

Nisgara Region Police Association Region of Peel—Ontario Works

#### Niveau international

Commission des droits de la personne du Nigéria

Commission sur l'égalité des sexes, gouvernement de l'Afrique du Sud

Délégation de l'Inde

Délégation du Sri Lanka

Faculté de droit Diego Portales/Corporación de Salud y Políticas Sociales (Chili)

Haut Commissariat des Nations Unies aux droits de l'homme

Université Daito-Bunka, Tokyo (Japon)

## Éducation

Bowmanville High School
Collège des Grands Lacs
Collège Glendon
Don Bosco Catholic High School
Fanshawe College, Disability Services
George Brown College
Harbord Collegiate
McGill University Faculty of Law
— Alternative Careers Fair

Niagara College Law Clerk Program Northern College of Applied Arts & Technology

Ontario Business Educators' Association Ontario University Employment and

Educational Equity Metwork
Osgoode Hall Law School-Lesbian, Gay,
Bisexual and Transgender Caucus

Bisexual and Transgender Caucus
Riverdale Collegiate

Ryerson Polytechnic University

– School of Social Work

Seneca College, School of Legal and Public Administration

Skills for Change (ESL)

St. Denis Elementary School

Toronto District School Board

- Ellesmere LINC

Toronto District School Board - Yorkminster LINC

University of Toronto, Faculty of Law Summer Mentorship Program University of Windsot, Faculty of Law

York Catholic District School Board Yorkhill Elementary School, Thornhill

## LISTE DES ACTIVITÉS D'ÉDUCATION DU PUBLIC

## communautaires Organismes

College Canadian Hearing Society and Cambrian Ajax Multicultural Festival AIDS Committee of Windsor

à l'automne de la personne - Journée portes ouvertes Commission ontarienne des droits

- Toronto Police Service Training Academy Cour de la citoyenneté canadienne Council of Agencies Serving South Asians Community Dialogue on Racism Community Development Network

- Pickering Elimination of Racial Discrimination Day Dufferin-Peel Employment Co-op Centre Deer Park United Church Group

Domestic Workers and Newcomers Intercede for the Rights of Caregivers, Hands Across the World

Canada League for Human Rights of B'nai Brith JobsMarket for Persons with Disabilities Islamic Centre of Southwest Ontario International Women's Day Fair, Windsor

Ontario Association of the Deaf Native Women's Resource Centre Meal-Trans

PRIDE Toronto '99 People First

Conference Sioux Lookout Anti-Racism Committee Réseau des femmes du Sud de l'Ontario

Association Toronto Employment Equity Practitioner's The Career Foundation South Asian Family Support Services

Whitby Citizenship Court Festival Toronto Human Rights Film and Video

## saupibinul Vxusioner commerciaux/

(Ontario) Alliance des moniteurs de ski du Canada AGF Management Limited African Canadian Legal Clinic

Association du Barreau canadien (Ontario) -Association du Barreau canadien Arts, Hospitality and Entertainment Group

Education juridique permanente

International Human Rights Canadian Lawyers Association for Axis Logistics

Injury Rehabilitation Coalition of Ottawa Region Providers of Brain

Grand Valley Human Resources Professionals' Gardiner Training and Consulting Community and Legal Aid Services Commerce Management Group

Human Resources Professionals Association Hicks Morley Law Firm

Ontario 2000 Conference Human Resources Professionals Association of of Durham

Insight Information Inc. Human Resources Solutions Show

Association of Ontario

King's Health Centre Investigations Summit Conference International Quality and Productivity Centre

Regroupement des dirigeant(e)s et National Congress of Italian Canadians

Torkin Manes Cohen & Arbus intervenant(e)s francophones de Hamilton

## LISTE DES PUBLICATIONS

Politique concernant la discrimination et le harcèlement fondés sur l'orientation sexuelle 1/00

Politique concernant la discrimination fondée sur la grossesse 5/99

Politique concernant le harcèlement racial par des insultes, des mauvaises plaisanteries et autres 6/96

Politique condernant le permis de conduire

Politique concernant le poids et la grandeur comme exigences professionnelles 6/96
Politique concernant les renseignements

médicaux liés à l'emploi 6/96 Politique concernant les tests de dépistage de l'alcool et d'autres drogues 11/96

Politique relative aux bourses d'études restrictives 8/97

Politique sur la croyance et les mesures d'adaptation relatives aux pratiques

religieuses 10/96 Politique sur le harcèlement sexuel et les remarques et conduites inconvenantes liées

au sexe 10/96
Politique sur la discrimination liée au VIH

et au sida 11/96 Politique sur la mutilation génitale féminine

4/96
Politiques des droits de la personne en Ontario
(routes des balisieures

(toutes des droits de la personne en Ontano) (toutes les politiques – Communiquer avec Publications Ontario) 12/99

### Autres publications

Affiche / carte – Code des droits de la personne (peut être encadrée) 5/00

La création de procédures internes de règlement des plaintes pour atteinte aux droits de la personne 6/96

Rapport annuel (disponible auprès de Publications Ontario)

Rapport sur la satisfaction des personnes ayant participé à une médiation 9/99

## Documents en langage simple

Adaptation aux besoins des personnes handicapées 1/95

Ce qu'il faut savoir sur les services de médiation 5/97

Guide du Code des droits de la personne 10/99 La mutilation génitale féminine: Questions et

réponses (en anglais/français, arabe /somali, souahéli/amharique) 8/99

souanent racial par des insultes, des

mauvaises plaisanteries et autres 3/97 Le harcèlement sexuel et les autres types de harcèlement pour des raisons fondées su

harcèlement pour des raisons fondées sur le sexe 11/96 Le sida et les affections liées au sida et le Code

Le sida et les affections liées au sida et le Code des droits de la personne – Série « Vous avez des droits» 6/90

Les droits de la personne au travail 2/00 L'orientation sexuelle et le *Code des droits* d

L'orientation sexuelle et le Code des droits de la personne – Série «Vous avez des droits» 6/90

Protection des droits religieux 1/00 Que faire en cas d'atteinte aux droits de la personne : Le guide des parties plaignantes 6/96

Que faire si on porte plainte contre vous pour atteinte aux droits de la personne : Le guide des parties mises en cause ou intimées 7/97 Vos droits avant, pendant et après la grossesse

Vos droits de mère qui allaite 9/99 Vous embauchez? Pensez aux droits de la Personne 10/99

## Politiques et directives

Directives pour les programmes spéciaux 11/97 matière d'adaptation des personnes handicapées 8/89

Lignes directrices concernant l'application de l'article 34 du Code des droits de la personne

Politique concernant la discrimination et la langue 6/96

## Direction de la médiation et des enquêtes

La Direction de la médiation et des enquêtes assure toutes les fonctions de la Commission liées à l'exécution du Code, et ce à partir d'un réseau de bureaux satellites répartis dans l'ensemble de la province.

L'Unité des renseignements et de l'accueil, la seule à être centralisée, est le premier point de contact du public avec la Commission. Ses agents répondent aux questions des personnes qui communiquent avec la Commission des quatre coins de la province et formulent une première ébauche de leurs plaintes, s'il y a lieu. Le Bureau de la médiation assure les services de médiation, mais traite aussi les demandes sous l'angle de l'article 34 du Code, qui prévoit que la Commission peut, à sa discrétion, décider de ne pas traiter une plainte si celle-ci pourrait ou devrait être traitée en vertu d'une autre loi, si elle est faite de manuaise foi, si elle est déposée après le délai prévu ou si elle n'est pas du ressort de la Commission. Le Bureau des enquêtes mène des enquêtes sur les plaintes et essaie de Commission. Le Bureau des enquêtes mène des enquêtes sur les plaintes et essaie de

résoudre les plaintes par conciliation.

La Direction met également au point des stratégies pluriannuelles pour gérer efficacement les dossiers de la Commission et définir la marche à suivre pour la médiation et

cacement les dossiers de la Commission et definit la marche a suivre pout la médiation et les enquêtes. Enfin, elle appuie les activités d'éducation du public que la Commission entreprend conformément à son mandat.

## Direction des politiques et de l'éducation

La Direction des politiques et de l'éducation joue un rôle principal et oriente la promotion et l'avancement des droits de la personne. Elle a aussi pour mission d'appuyer l'application du Code.

La Direction favorise la promotion des droits de la personne en assurant le respect

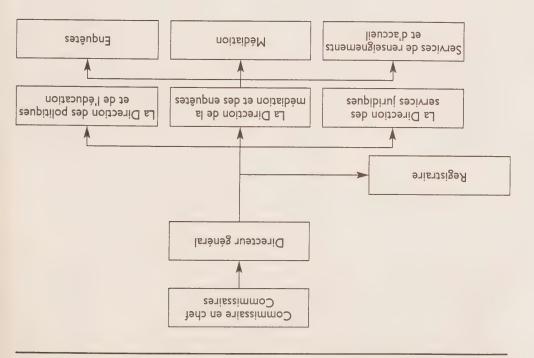
du Code et des obligations internationales dans le domaine des droits de la personne. Elle élabore des énoncés de politique et des directives officielles et mène des recherches sur une vaste gamme de questions reliées aux droits de la personne et à la justice sociale. La Direction est responsable des relations à l'échelle nationale et internationale, de la gestion des dossiers, des rapports avec les médias et les intervenants, du site Web et des publications. De plus, elle mène des consultations publiques, anime des groupes de discussion et représente la Commission auptès de groupes de travail internationaux et de délégations de l'étranger.

La Direction est responsable de la planification stratégique des campagnes d'éducation du public, des programmes de communications au niveau de l'organisation, et de la mise en oeuvre d'un vaste éventail de programmes éducatifs et d'initiatives de partenariat, comme des campagnes de sensibilisation, des conférences et des ateliers. Finalement, elle fournit un soutien en matière de politiques et de communications au Bureau du commissaire en chef et au Bureau du directeur général.

## Direction des services juridiques

La Direction des services juridiques aide la Commission à s'acquitter de tous les éléments de son mandat, qu'il s'agisse de veiller au respect du Code, d'éduquer le public ou de plaider des causes. Elle fournit des conseils juridiques aux hauts fonctionnaires, et aux chefs et agents de la Direction de la médiation et des enquêtes en ce qui concerne la préparation des plaintes et la conciliation des parties. Enfin, elle donne à la Commission les avis juridiques que celle-ci lui demande et fournit les avocats qui représentent la Commission devant la commission d'enquête et les tribunaux lors des révisions judiciaires et des appels.

## ORGANIGRAMME DE LA COMMISSION



## STRUCTURE DE LA COMMISSION

### Bureau du commissaire en chef

Le commissaire en chef joue le rôle principal parmi les commissaires qui forment la Commission. Il veille à ce que la Commission s'acquitte des fonctions que lui impose la loi d'une manière qui garantit le respect des droits de la personne en Ontario, tant dans le secteur public que dans le secteur privé. Le commissaire en chef et les commissaires établissent les principes directeurs de la Commission et statuent sur les plaintes déposées en application du Code.

### Bureau du directeur général

Le directeur général joue le rôle principal parmi les chefs des directions qui aident la Commission à s'acquitter des fonctions que lui impose la loi. Il dirige l'élaboration et la mise en oeuvre des plans d'affaires et des plans opérationnels se rapportant à ces directions, de même que la planification et l'exécution des initiatives visant à amélioret leur aménagement organisationnel. Le Bureau du registraire, qui relève du Bureau du directeur général, traite les demandes de réexamen des décisions relatives aux plaintes pour atteinte aux droits de la personne, coordonne l'ensemble des fonctions liées aux réunions de la Commission et des comirés, et s'occupe de tout ce qui touche l'accès à l'information et l'ombudsman.

#### CHRISTIANE RABIER

de Sudbury. politiques et vice-doyenne des sciences humaines de l'Université Laurentienne Montpellier. A l'heure actuelle, elle est directrice du département des sciences maîtrisc à l'Université de Montréal et étudié le droit public à l'université de doctorat de l'université de Nice-Sophia-Antipolis, M<sup>me</sup> Rabier a fait sa Christiane Rabier a été nommée commissaire en avril 1999. Titulaire d'un

Elle joue un rôle actif au sein de la collectivité francophone de Sudbury

spéciaux du Canada en 1998 et l'Opération Nez-rouge en 1999. domaine de l'éducation permanente. Mme Rabier a été bénévole pour les Jeux olympiques des études postsecondaires. Elle a également été conseillère auprès de TV Ontario dans le et a participé à l'élabotation d'un programme visant à encourager les femmes francophones à faire

#### DUINNAM NNA-HTIQUĮ

comité consultatif de North York pour les personnes handicapées, co-présidente fauteuil roulant de l'université de Toronto, Mme Manning a été présidente du versité de Toronto. Actuellement coordonnatrice du comité d'accessibilité en gement pour accès facile, a fait des études de criminologie et de droit à l'uni-Mme Manning, qui est conseillère en accessibilité des services et en aména-Judith-Ann Manning fait partie de la Commission depuis février 2000.



cadre de la course annuelle pour la recherche. Toronto. Elle fait également du bénévolat au Centre des sciences de la santé Sunnybrook dans le du conseil consultatif sur l'accessibilité des transports de la Commission des transports de du conseil d'administration du Centre for Equality Rights in Accommodation, et vice-présidente

#### MAE RADFORD

Wentworth. domicile pour l'organisme Infirmières de l'Ordre de Victoria de Hamiltonde visites amicales, des soins palliatifs, des services de transport et des repas à Aujourd'hui, elle gère une équipe de 1 700 bénévoles qui offrent des services baccalauréat ès arts en administration de la santé de l'université York. détient un diplôme en soins infirmiers du Toronto Western Hospital et un Mae Radford est membre de la Commission depuis avril 1999. Mme Radford



Mme Radford fait partie de la Coalition of Community Health and Support Services,

de Burlington, aussi vice-présidente du comité populaire de lutte contre la violence faite aux femmes de la ville l'Association ontarienne de soutien communautaire et présidente du district B. Mme Radford est qui préconise la prestation de soins de santé en milieu communautaire. Elle est membre de

#### MICHEL LALONDE

Après avoir été ces vingt dernières années conseiller municipal et préfer adjoint, Michel Lalonde est aujourd'hui préfer d'Hawkesbury Est. Sa nomination à la Commission remonte à décembre 1997. En 1993, M. Lalonde a été président du conseil des comrés unis de Prescott et Russell. Il a été élu au comité de direction, au comité de planification et au comité des travaux publics du conseil. Ancien président du conseil de Prescott Mutual Insurance publics du conseil.



et du conseil d'administration de l'Hôpital général de Hawkesbury and District General Hospital Board, M. Lalonde a reçu le Prix d'excellence du comté de Prescott en 1985. Agriculteur de profession, il joue un rôle acrif au sein de la collectiviré agricole locale. Il a siégé au conseil d'administration de la commission locale de l'emploi agricole de Glengarry, Prescott et Russell de 1989 à nistration de la commission locale de l'emploi agricole de Glengarry, Prescott et Russell de 1989 à 1996 et présidé le comité d'examen par les pairs du plan d'agriculture écologique de 1993 à 1997.

### CLAUDETTE ROBINSON

Claudette Robinson a été nommée commissaire en mars 1998. M<sup>me</sup> Robinson a étudié à l'université d'Ottawa et à l'université McMastet. En plus d'être coordonnatrice des services en français au Sheridan College, elle travaille comme consultante linguistique pour différentes entreprises du secteur privé. M<sup>me</sup> Robinson a collaboré à la rédaction d'une série de livres de lecture en français pour les écoles élémentaires et secondaires. Elle est auteure et coauteure



de trois séries d'émissions télévisées nationales en français produites pour la programmation éducative de tfo, la chaîne française de TVOntatio, dont une qu'elle a également animée. M<sup>me</sup> Robinson, qui a enseigné des cours d'été à l'Université d'Ottawa, a été engagée comme experte-conseil par le conseil de l'éducation de Halton. Elle a de plus dirigé un cours d'enseignement du français comme langue seconde pour le ministère de l'Éducation.

#### ABDUL HAI PATEL

Abdul Hai Patel est membre de la Commission depuis avril 1999. M. Patel a fait ses études primaires en Inde, ses études secondaires à la Barbade et ses études postsecondaires à l'Université York. À l'heure actuelle, il travaille comme spécialiste technique des systèmes pour Ontario Hydro.

M. Patel a reçu l'une des I25 médailles commémoratives que décerne le



gouverneur général pour services à la communauré. Il a également obtenu la Distinction de l'Ontario pour services bénévoles du ministère des Affaires civiques, de la Culture et des Loisirs. Il fait partie du comité consultatif avec les minorités de l'Asie du Sud et de l'Asie occidentale de la police de Toronto et est coordonnateur du conseil islamique de coordination des imams du Canada. M. Patel est vice-président de l'Association of Employees for Employment Equity d'Ontario Hydro et membre du Provincial Committee of Power Workers Union on Employment Equity and Diversity.

#### RICHARD MILES

Avant sa nomination à la Commission en juillet 1992, Richard Miles a travaillé au gouvernement de l'Ontario comme haut fonctionnaire au ministère des Services sociaux et communautaires, au Secrétariat à la condition des personnes handicapées du gouvernement fédéral, et, plus récemment, au sein du Handicapped Action Group Incorporated à Thunder Bay. M. Miles avait été nommé par la ministre des Affaires civiques, de la Culture et des Loisirs au nommé par la ministre des Affaires civiques, de la Culture et des Loisirs au

Groupe d'étude sur le Code des droits de la personne de l'Ontario, dont l'un des rôles avait été de procédet à un examen des activités de la Commission ontatienne des droits de la personne.

#### MARNIE PAIKIN, CM

Marnie Paikin est commissaire depuis septembre 1996. Ancienne présidente du Conseil canadien des Chrétiens et des Juifs, M<sup>me</sup> Paikin a reçu le «Human Relations Award» de cet organisme et le «Outstanding Woman Award» du gouvernement de l'Ontatio. M<sup>me</sup> Paikin, que la ville de Hamilton a accueillie dans sa «Gallety of Distinction», a également reçu l'Ordre du Canada. Elle est à l'heure actuelle membre du conseil d'administration d'Énergie atomique du Canada Ltée et de Westcoast Energy Inc.



#### IJ A3T39

Directeur général du Ming Pao Daily News (édition de l'Est), Peter Li est membre de la Commission depuis septembre 1997. Il fait patrie du comité de développement sino-canadien de la Fondation du Hospital for Sick Children et siège au Asian Business Committee of Metro Toronto, ainsi qu'à l'organisme Junior Achievement (Jeunes Entreprises) de la région de York. Ancien membre du conseil consultatif sur la clientèle asiatique de Canada Trust, il a été directeur du conseil consultatif sur la clientèle asiatique de Canada Trust, il a été directeur



de Chinese Information and Community Services et vice-président de la Chinese Canadian Advertising, Media and Marketing Association. Enfin, M. Li a été directeur général de l'hôtel Victoria et administrateur de projet du Chinatown Centre.

#### **NALIN KANUCK**

Nalin Kanuck a été nommé commissaire en septembre 1997. Expert-conseil en gestion et en finances, M. Kanuck est aussi conseiller en relations interraciales auprès du conseil de l'éducation de la région de York. Au Sri Lanka, M. Kanuck a été juge de paix, ce qui l'a notamment amené à enquêtet sur des incidents de violation des droits de la personne. Il a aussi été président et directeut général du conseil de développement régional au ministère du



développement régional de ce pays. M. Kanuck a été directeur du National Youth Service Council, qui relevait du bureau du premier ministre du Sri Lanka. Il détient un baccalauréat ès arts de l'université de Ceylan et un diplôme en administration publique de l'université de Colombo, au Sri Lanka. Docteur bonoris causa en administration publique de la City University of California, M. Kanuck est diplômé du Canadian Institute of Certified Administrative Managers et fellow du British Institute of Management, en Angleterte.

## LISTE DES COMMISSAIRES

## KEITH C. NORTON, c.r., B.A., LL.B.

Commissaire en chef

La nomination de Keith Morton au poste de commissaire en chef de la Commission ontarienne des droits de la personne remonte au 18 juillet 1996. Éducateur et avocat de formation, M. Morton a fait des études de droit à l'université Queen's à Kingston et détient un diplôme en pédagogie de l'Ontario College of Education. Il a exercé la profession d'avocat spécialisé a desir de la formille à Vinerson et al profession d'avocat spécialisé.



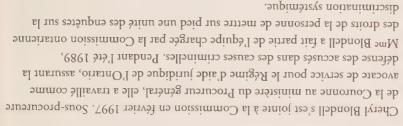
en droit pénal et en droit de la famille à Kingston et il a enseigné aux paliers secondaire et postsecondaire. M. Norton a été tout à tout ministre des Services sociaux et communautaires, adjoint

parlementaire du Trésoriet de l'Ontatio et du ministre de l'Économie et des Affaires intergouvernementales, ministre de la Santé, ministre de l'Éducation et ministre des Collèges et Universités au gouvernement de l'Ontatio.

Entre 1981 et 1983, alors qu'il détenait le portefeuille de l'Environnement, M. Morton a été le premier membre d'un conseil des ministres canadien à témoigner devant un comité du Sénat américain. Tout au long de sa carrière, M. Norton s'est fait le champion des personnes handicapées, des personnes âgées et des personnes défavorisées. Il a également participé à plusieurs entreprises commerciales.

M. Norton est un ancien président du Tribunal des droits de la personne du Canada.

#### CHERYL BLONDELL





### R.P. WILLIAM G. CLIFF

Le Révérend Père William Grant Cliff, pasreur de l'église St. John the Evangelist à Strathroy, dans le diocèse de Huron, fair parrie de la Commission depuis février 1997. Il est ancien membre du conseil de l'université Western Ontario, aumônier militaire de la Légion royale canadienne et membre du comité chargé des relations entre anglicans et catholiques du diocèse de Huron. Le Révérend Père Cliff, qui a été formé au King's College et au Huron.



College de l'université Western Ontario, a servi à l'aumônerie du St. Joseph's Health Centre à London et dans plusieurs congrégations de London, Simcoe, Hanovet et Durham, en Ontario.

Le tableau ci-après résume les engagements publics de la Commission pour l'exercice 2000-2001.

|   | Per avril 2000.  • Régler au moins 850 dossiers grâce au processus d'enquête.  • Réduire la durée médiane d'ouverture des dossiers à moins de 9 mois.  |
|---|--|
| Enquêtes  | Réglet 80 pour cent des dossiers ouverts il y a plus d'un an au plus tard le   |
| noitsibàM   | • Obtenit un taux de règlement des plaintes soumises à une médiation d'au moins 65 pour cent.<br>• Réglet au moins 1 300 dossiets.   |
| lieussA   | • Préparer les plaintes dans les 15 à 20 jours qui suivent la réception du questionnaire prévu.  |
| Renseignements  | Réduire le délai moyen de réponse aux appels reçus directement par les agents des services de renseignements à moins de 2 minutes.   |
| Politiques  | <ul> <li>Publier un document sur la discrimination fondée sur l'âge.</li> <li>Organiser des consultations et élaborer un document de travail sur la discrimination fondée sur l'âge.</li> <li>Publier un exposé de principe sur l'identiré sexuelle.</li> <li>Publier un document d'étude sur les droits de la personne dans le domaine des assurances.</li> <li>Publier une version révisée de Directive pour l'évaluation des besoins en matière d'adaptation des personnes handicapées.</li> <li>Publier le rapport de l'enquête sur l'accessibilité aux véhicules de transport en commun.</li> <li>Organiser un deuxième dialogue sur les politiques.</li> <li>Organiser un deuxième dialogue sur les politiques.</li> </ul>   |
| Promotion des droits de la personne et sensibilisation à cette question | <ul> <li>Organiser une nouvelle campagne de sensibilisation de la population.</li> <li>Mettre le programme à l'intention des autochtones en œuvre.</li> <li>Intégrer les obligations internationales à toutes les nouvelles initiatives politiques.</li> <li>Lancer l'initiative politique pour l'ACCDP en 2001.</li> <li>Accroître l'accessibilité des publications grâce à des feuilles de renseignements d'une page sur tous les grands domaines d'intervention du Code.</li> <li>Obtenir un taux de satisfaction de 80 pour 100 parmi les participants à toutes les activités d'éducation du public.</li> <li>Lancer un nouveau site Web qui accroît l'accessibilité, est plus facile à consulter et est plus axé sur les clients.</li> </ul>  |
| SERVICE   | ENGAGEMENTS POUR 2000-2001   |
| בין לפין בין מין מין מין מין מין  | A COLOR COLOR STANCE A VIDA A MANAGAMANA MI AD CAMADA CAMANA STANCE CALAMANA CAMANA CA |

corporatifs

Projets

• Lancer une étude sur l'accessibilité.

• Mettre en œuvre des normes de contrôle de la qualité.

· Réduire la durée médiane d'ouverture des dossiers à 12 mois.

• Élaborer un programme de formation sur les rechniques d'éducation du public.

| RÉALISATIONS EN 1999-2000  | ENGAGEMENTS PRIS EN 1999-2000   | SERVICE                |
|--|---|------------------------|
| Obtention d'un taux de tèglement des<br>plaintes soumises à une médiation de<br>74 pout cent.  | • Obtenit un taux de règlement<br>des plaintes soumises à une<br>médiation d'au moins 65 pour<br>cent.  | Médiation              |
| Fermeture de 1 270 dossiers par le<br>service de médiation.  | • Régler I 100 dossiers grâce à<br>la médiation.  |                        |
| Résolution prévue de 520 dossiers.<br>En fait, 555 dossiers ont été fermés (106 pour cent).  | • Réglet 80 pour cent des dossiers<br>ouverts il y a plus de deux ans<br>au plus tatd le 31 mars 1999.  | Enquêtes               |
| Règlement de 1035 dossiers grâce au processus d'enquête.   | • Régler I 100 dossiers grâce au<br>processus d'enquête.  |                        |
| Durée médiane d'ouverture des dossiers au 31 mars 2000 : 9 mois.   | <ul> <li>Réduire la durée médiane<br/>d'ouverture des dossiers à<br/>moins de 10 mois.</li> </ul>   |                        |
| Åge moyen d'ouverture des dossiers :<br>13 mois.   | • Réduire la durée moyenne<br>d'ouverture des dossiers à<br>14 mois.  |                        |
| Élabotation de normes de contrôle<br>de la qualité pour chaque direction.  | • Instaurer des normes de contrôle<br>de la qualité en septembre 1999.  | Projets<br>corporatifs |
| Formation dispensée aux nouveaux agents des services d'accueil, de renseignements et d'enquêtes.  Pormation sur la rédaction des analyses motivées de cas, l'organisation de séances de conciliation et les techniques de télétravail aux membres du personnel touchés et lors de la séance de formation au personnel de séance de formation au personnel de seance de formation et des seance de formation au personnel de seance d | • Offrir des programmes de formation sur l'éducarion du public, la médiation, le harcèlement sexuel et la qualité du service.                   |                        |
| Achèvement de la demande de<br>proposition relative à une étude sur<br>l'accessibilité.  | • Entreprendre une étude sur l'accessibiliré aux services de la Commission et ses pratiques d'emploi, du point de vue des personnes handicapées |                        |

#### RÉALISATIONS EN 1999-2000 ENGAGEMENTS PRIS EN 1999-2000

discrimination et le harcèlement fondès sur Publication de Politique concernant la

Politiques

SERVICE

l'orientation sexuelle.

la discrimination fondée sur l'âge. Elaboration d'un document de travail sur

## Autres initiatives politiques

l'identité sexuelle. Elaboration d'un exposé de principe sur

l'assurance. Elaboration d'un document de travail sur

élaboration d'un rapport d'étude. d adaptation des personnes handicapées et l'évaluation des besoins en matière révisions à apporter à la Directive pour Organisation de consultations sur les

les municipalités ontariennes. véhicules de transport en commun dans sibilité des personnes handicapées aux Réalisation d'une enquête sur l'acces-

sur l'évolution du dossier des droits de la Organisation du tout premier dialogue

ciaires de l'aide sociale. du dépistage des drogues chez les bénéfila santé mentale, et examen du dossier l'orientation sexuelle, étude de la Loi sur des modifications à la politique sur Examen du projet de loi 5 et intégration

> sexuelle. principe sur l'orientation • Définir une position de

fondée sur l'âge. politique sur la discrimination • Amorcer l'élaboration d'une

le Code. assurer leur conformité avec ruoq əvirsisigəl əəldməseA'l projets de loi déposés devant • Examen des textes de loi et des

parlé à un membre du personnel. 100 du nombre de personnes qui ont par suite d'une augmentation de 30 pour Délai moyen de réponse de 2 minutes

60 secondes. de renseignements à moins de réponse des agents des services

tion d'une plainte à 15 jours.

• Maintenir le délai de prépara-

de renseignements. de 30 jours après réception de la trousse Préparation des plaintes dans un délai

> • Réduction du délai moyen de Renseignements

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## CADRE DE RESPONSABILISATION

objectifs définis antérieurement. fixe pour l'exercice à venir et à rendre compre de ses accomplissements par rapport aux annuels (1997-1998, 1998-1999). Ce cadre vise à préciser les objectifs que la Commission se La Commission a présenté son cadre de responsabilisation dans ses deux derniers rapports

Le tableau ci-après résume les accomplissements de la Commission en 1999-2000.

#### **SERVICE RÉALISATIONS EN 1999-2000 ENCACEMENTS PRIS EN 1999-2000**

quatre coins de la province. dans les magasins de la LCBO aux transport en commun, 2) publicité volets: 1) publicité dans les moyens de Réalisation d'une campagne en deux

l'égalité des autochtones en Ontario. autochtones hors réserves et favoriser Commission dans les collectivités pour accroître la présence de la de la personne parmi les autochtones gramme de sensibilisation aux droits sition en ce qui concerne un pro-Conception d'une demande de propo-

de divers instruments internationaux. rapports canadiens réalisés dans le cadre Communication d'observations sur les

Sud et le Nigéria. l'Inde, le Japon, le Chili, l'Afrique du de divers pays, dont le Sri Lanka, Accueil de délégations internationales

sonne en milieu de travail. d'une affiche sur les droits de la permembres de l'ACCDP à la réalisation Collaboration avec les associations

des publications. Diffusion d'environ 30 000 exemplaires

Participation du personnel à 108 acti-

vités pour rejoindre 8 636 personnes.

20 pour 100 par rapport au dernier

Augmentation du nombre de visites de

exercice.

au harcèlement sexuel. pagne pour sensibiliser le public

Organiser une deuxième cam-

avec les collectivités autochtones. • Accroître les activités de liaison

nationale et internationale. • Maintenir les contacts à l'échelle

Commission (10 000 par année). sion des publications de la · Maintenir les niveaux de diffu-

personnes). ont rejoint environ 4 600 en 1998-1999 (80 activités, qui d'éducation du public atteints Maintenir les niveaux d'activités

de la Commission. nombre de visites au site Web • Accroître de 10 pour 100 le

cette question

sensibilisation à

des droits de la

personne et

Promotion

## RESTRUCTURATION

En 1999-2000, la Commission a restructuré ses services internes, dont la planification et l'affectation des ressources humaines, la technologie de l'information ainsi que les services financiers et administratifs. La planification centrale relève maintenant du Bureau du directeur général. Les responsabilités associées à cette fonction comprennent la surveillance du rendement de l'organisme et la publication de rapports sur ce sujet, la mise en oeuvre d'initiatives pour l'amélioration du fonctionnement de l'organisme, comme le développement de nouvelles applications technologiques en matière de gestion de dossiers, et la formation du personnel. D'autres fonctions ont été transférées à la Direction des politiques et de l'éducation, dont la gestion du site Web et la réalisation et la diffusion des publications.

Au cours de l'année, la Commission a aussi dû relever le défi de réaliser des économies additionnelles par suire des mesures de restrictions budgétaires prises dans l'ensemble du gouvernement. La meilleure solution trouvée a pris la forme de nouvelles méthodes de travail pour le personnel de la Commission posté en région, grâce au télétravail. En conséquence, certains membres du personnel partagent maintenant un bureau avec d'autres ministères, alors que d'autres travaillent de la maison. Ces mesures ont permis de préserver les emplois ainsi qu'une présence de la Commission dans les régions à l'extérieur de Toronto.

Le personnel de la Commission a aussi travaillé à l'élaboration d'un programme d'assurance de la qualiré, et chaque direction a établi ses propres normes ainsi que les moyens de les atteindre et de les maintenir. Ces nouvelles normes de service entreront en vigueur dans la prochaine année.

davantage aux dossiers les plus anciens, en particulier ceux ouverts depuis au moins deux ans. L'an dernier, la Commission avait pris l'engagement de mener les enquêtes nécessaires pour régler 1 100 plaintes et elle a atteint 94 pour cent de cet objectif. Elle s'était aussi engagée à fermer 80 pour cent des dossiers ouverts depuis au moins deux ans au 31 mars 1999. Cette année, elle a réglé 555 dossiers, ce qui représente 106 pour cent de l'objectif de 520 fixé l'an passé. La réduction du nombre de vieux dossiers a permis de diminuer considérablement l'âge moyen des dossiers en traitement, qui se situe autour de 13 mois.

La Commission a aussi marqué d'importants progrès dans les délais de traitement d'une plainte, de l'ouverture du dossiet jusqu'au règlement, s'établit actuellement à 18 mois, comparativement à 22 mois l'an dernier, et l'âge médian des dossiers en cours de traitement est maintenant de 9 mois.

Les indicateurs de rendement établis dans le plan d'activités 1999-2000 du ministère en matière de service au public ont aussi été atteints par la Commission. L'an detnier, la Commission visait un taux de règlement des plaintes de 65 pour cent à l'étape de la médiation. Cette année, elle a obtenu un taux de 74 pour cent.

### VOLUME DE DOSSIERS EN COURS DE TRAITEMENT

Au cours de l'exercice 1999-2000, la Commission a fait de grands progrès dans plusieurs domaines, dont la gestion des dossiers, le délai de traitement des plaintes et l'éducation du public. Ses objectifs pour cette année ont été soit atteints ou dépassés, et ce dans tous les domaines.

Pour la quatrième année d'affilée, la Commission a réglé plus de dossiers qu'elle n'en a ouverts. En 1999-2000, l'année la plus productive de son histoire, elle a ouvert 1861 nouveaux dossiers et en a clos 2305. Au 31 mars 2000, le nombre de dossiers en cours de traitement s'élevait à 1952, comparativement à 2386 le 31 mars 1999 et à 2745 le 31 mars 1998. Il y a trois ans, la Commission s'était engagée envers la population ontarienne à réduire les plaintes en cours de traitement à des affaires courantes. Les statistiques de l'année écoulée démontrent que la Commission se rapproche de son objectif, car le volume de dossiers en cours de traitement corresse rapproche de son objectif, car le volume de dossiers en cours de traitement corresse pond à peu près au nombre de plaintes reçues dans une année, et l'âge moyen d'un dossier est de 13 mois. Mentionnons également que la Commission a renvoyé 92 plaintes devant une commission d'enquête (droits de la personne).

# DIRECTION DE LA MÉDIATION ET DES ENQUÊTES

## RENSEIGNEMENTS ET ACCUEIL

L'Unité des renseignements et de l'accueil représente le premier point de contact du public pour obtenit de l'information sur la marche à suivre pour déposer une plainte pour obtenit de l'information sur la marche à suivre pour déposer une plainte, ainsi que d'autres renseignements sur le déroulement du processus. En 1999-2000, l'Unité a reçu 153 306 appels téléphoniques. Le personnel a répondu une agente ou un agent des services de renseignements. En moyenne, on a répondu une agente ou un agent des services de renseignements. En moyenne, on a répondu et reçu 2 409 trousses remplies en retour. De ce nombre, 1861 trousses, ou 77 pour et reçu 2 409 trousses remplies en retour. De ce nombre, 1861 trousses, ou 77 pour et reçu 2 accente devenues des plaintes officielles.

## MÉDIATION

La médiation volontaire offre aux parties en litige qui le désirent la possibilité de se rencontret dans un cadre structuré pour régler leur différend dès le début du processus de traitement de la plainte. En 1999-2000, 1 270 plaintes ont été résolues par le service de la médiation, soit plus de la moitié du nombre total de dossiers traités. Le taux de succès de la médiation est de 74 pour cent. Dans la dernière année, la ses services de médiation. Les résultats indiquent qu'à peu près 75 pour cent des parties plaignantes et des intimés admissibles aux services de médiation optent pour cette formule pour réglet leur différend. Les conclusions du sondage témoignent aussi du taux de réussire élevé de la médiation, 70 pour cent des parties plaignantes aussi du taux de réussire élevé de la médiation, 70 pour cent des parties plaignantes apant jugé qu'on avait règlé adéquatement leur problème et 78 pour cent des intimés ayant jugé qu'on avait règlé adéquatement leur problème et 78 pour cent des intimés ont indiqué qu'ils autaient de nouveau recours aux services de médiation s'ils avaient apant indiqué qu'ils autaient de nouveau recours aux services de médiation s'ils avaient à réglet une autre plainte relative aux droits de la personne.

### ENQUÊTES

Le succès du programme volontaire de médiation a eu pour effet de réduire de façon constante le nombre de plaintes faisant l'objet d'une enquête, qui est passé de 1780 en mars 1998 à 1140 en mars 1999, puis à 718 en mars 2000. Le programme de médiation a aussi permis aux services d'enquête de la Commission de se consacter

des attentions spéciales et des invitations à sortit. La commission d'enquête a noté que les « avances relationnelles » ne sont souvent pas vues comme une forme de harcèlement, mais sont plutôt traitées à la légète par les collègues de travail et les employeurs, qui voient davantage dans ce comportement un béguin et une scène de séduction.

En ce qui concerne les constatations antérieures de harcèlement sexuel par le particulier mis en cause, le témoignage d'expert présenté a clairement démontré que l'intimé était un récidiviste qui n'avait pas reconnu sa responsabilité et qui s'était engagé dans un schème de comportement sans bornes.

Les intimés ont intenté une poursuite civile contre la plaignante et réclament 1,5 million de dollars en dommages pour atteinte à leur réputation dans le cadre du processus de traitement de la plainte portant sur les droits de la personne. La commission d'enquête a déterminé que la poursuite intentée par les intimés avait nettement des airs de représailles. La commission d'enquête a conclu que la conduire des intimés, qui profètent des menaces à l'endroit de la plaignante, de sa famille, de la Commission et de ses témoins, était une forme de représailles.

Situation actuelle: La décision relative aux recours n'a pas encore été rendue.

de personnes identifié par un morif illicire de discrimination prévu par le Code, qu'elles ne peuvent être séparées de leurs membres et qu'elles endossent elles-mêmes les caractéristiques faisant l'objet de mesures de protection.

La commission d'enquête a donc conclu que tant Ray Brillinger que les Archives s'étaient vus refuser des services d'impression en violation de l'article 1 du Rode. Elle a conclu que Ray Brillinger, en raison de son association avec les Archives, avait été indirectement victime de discrimination en tant que membre des Archives et en tant que président de l'organisation à l'époque. La commission d'enquête a conclu que les Archives avaient été victimes de discrimination directement et par association.

Situation actuelle: Le débat sur la Charre a eu lieu le 1et novembre 1999. La commission d'enquête a remis à plus tard le prononcé de sa décision.

## Nicole Curling v. The Victoria Tea Company Ltd., A. Torimiro and The Torimiro Corporation Décision de la commission d'enquête: 22 déecembre 1999

La plaignante, Nicole Curling, a déposé une plainte contre son employeur, Alexander Torimiro et The Victoria Tea Company, le 15 avril 1994, alléguant qu'elle avait été victime de harcèlement sexuel et d'avances sexuelles, en violation du paragraphe 7 (2) et de l'alinéa 7 (3) a) du Code. En 1998, la plainte a été modifiée pour y inclure la discrimination en matière d'emploi fondée sur le sexe, en violation du paragraphe 5 (1) et de l'article 9 du Code.

Au cours de l'ardience en septembre 1999, une allégation de représailles en violation de l'article 8 a été ajoutée à la plainte par suite d'une poursuite en diffamation intentée par le particulier mis en cause et sa nouvelle entité sociale, The Torimiro Corporation, ajoutée comme partie intimée dans l'affaire.

Décision de la commission d'enquête: La commission d'enquête a déterminé que Nicole Curling avait été soumise à une atmosphère de travail empoisonnée en raison d'un climat de travail sexualisé. La commission d'enquête a qualifié de harcèlement sexuel le comportement du particulier mis en cause à l'égard de la plaignante, notamment ses attouchements importuns, ses baisets et les remarques sut son corps.

La commission d'enquête a conclu que la persistance du particulier mis en cause à poursuivre une relation avec la plaignante constituait une forme d'avances sexuelles. Le témoignage d'expert présenté a démontré que les «avances relationnelles» doivent aussi être considérées comme une forme de harcèlement sexuel. Ce dernier type de harcèlement se distingue particulièrement par les pressions exercées par le harcèlement se distingue particulièrement par les pressions exercées par le harcèlement des ses désirs pour l'amener à développer une relation intime avec lui. Ce genre de harcèlement débute généralement par des cadeaux,

Décision de la commission d'enquête: La commission a déterminé qu'elle avait la compétence voulue pour poursuivre l'audition de la plainte de M. Tilberg, en dépit des mesures prises par la Commission pour abandonner la direction active de l'affaire devant la commission d'enquête. McKenzie a alors présenté une requête en révision judiciaire de la décision intérimaire de la commission d'enquête.

Résultat de la révision judiciaire: La majorité de la Cour divisionnaire a décidé d'accepter la requête en révision judiciaire de McKenzie. La Cour a conclu qu'en vertu du paragraphe 39 (2) du Code, la Commission avait l'obligation devant la loi d'assurer la direction de l'affaire. Or, une fois que la Commission avait abandonné la direction active de l'affaire, la commission d'enquête n'était plus compétente pour entendre la plainte. La Cour a conclu qu'en l'absence de la Commission, aucune autre partie ne possède l'autorité légale d'assumer la direction de l'affaire. Elle a aussi statué que l'intérêt public défendu par la Commission a préséance, en cas de conflit, sur les intérête et les droits individuels du particulier qui porte plainte.

Situation actuelle: Appel est en instance devant la Cour d'appel.

#### AUDIENCES DES COMMISSIONS D'ENQUÊTE

Brillinger and the Canadian Lesbian and Gay Archives v. Imaging Excellence Inc. and Scott Brockie Décision de la commission d'enquête: 29 septembre 1999

Le plaignant, Ray Brillinger, a demandé des services d'impression - enveloppes, papier à en-têre et cartes de visite – à la partie intimée, Imaging Excellence Inc., au nom de Canadian Lesbian and Gay Archives (les «Archives»). Le président de la société Imaging Excellence, Scott Brockie, a refusé de fournir les services demandés en raison de ses croyances religieuses. Scott Brockie croit que l'homosexualité est contraire aux enseignements de la Bible. M. Brockie a fait valoit que son droit à la liberté de religion en vertu de l'alinéa 2 a) de la Charte canadienne des droits et la liberté de religion en vertu de l'alinéa 2 a) de la Charte canadienne des droits et

L'audience s'est déroulée en deux étapes : la première étape a porté sur la violation du Code et la seconde, sur le moyen de défense fondé sur l'alinéa 2 a) de la Charte.

Décision de la commission d'enquête (première étape): La commission d'enquête a conclu que le Code protège la Canadian Lesbian and Gay Archives contre toute discrimination fondée sur l'orientation sexuelle. La commission d'enquête a déterminé que les organisations comme les Archives sont tellement imprégnées de l'identité et du caractère particulier de leurs membres, ou représentent si nettement un groupe du caractère particulier de leurs membres, ou représentent si nettement un groupe

#### Chose jugée/Préclusion relative à la chose jugée

• La Cour partage l'avis de la commission d'enquête selon lequel il convient de téexaminer les questions traitées par l'arbitre du travail – en particulier la question de la présumée altercation finale entre M. Naraine et un collègue de travail – afin de trancher les questions relatives aux droits de la personne.

#### «Exclusion» d'éléments de la preuve

• La Cour a conclu que la commission d'enquête était en droit d'exclure les incidents survenus après le congédiement de M. Naraine de Ford comme preuves non pertinentes. Quoi qu'il en soit, la Cour a fait remarquer que la commission n'avait pas exclu cette preuve, et qu'elle l'avait plutôt admise sans toutefois lui accorder de valeut, comme elle était en droit de le faire.

#### Resbousspilité de l'employeur

• La Cour a maintenu la décision de la commission d'enquête d'imputer la responsabilité du harcèlement racial à la compagnie Ford, parce qu'elle n'a rien fait – et a en fait réagi avec indifférence – pour mettre fin aux propos raciaux et aux graffitis à son usine de Windsor.

Situation actuelle: Lappel est en instance devant la Cour d'appel.

#### McKenzie Forest Products Inc. v. Adam Tilberg et al. Décision de la Cour divisionnaire, révision judiciaire: 31 mai 1999

McKenzie Forest Products Inc. a demandé la révision judiciaire d'une décision intérimaire de la commission d'enquête prise dans le cadre de l'audition de la plainte d'Adam Tilberg. Dans sa plainte, M. Tilberg prétend que McKenzie a refusé de l'embaucher parce qu'il est né sans pouces.

La Commission a renvoyé la plainte de M. Tilberg devant la commission

d'enquête. Elle a ensuite informé la commission d'enquête et les parties en litige qu'elle était parvenue avec McKenzie Forest Products à un règlement des questions d'intérêt public et qu'elle ne « participerait plus » à l'audience. M. Tilberg était informé de son droit d'engaget des poursuites en son propre nom. «Comme condition de son abandon des procédures», la Commission a demandé à McKenzie une lettre de garantie, que la compagnie lui a fournie.

Laudition de la plainte de M. Tilberg a repris en l'absence de la Commission.

McKenzie a alors présenté devant la commission d'enquête une motion visant à obtenit une ordonnance de rejet de la plainte de M. Tilberg, pour le motif que la commission d'enquête n'avait plus le pouvoit de poursuivre son travail en taison de la décision de la Commission de se retirer du dossier et d'abandonner la direction de l'affaire. La Commission a été informée et s'est opposée à la motion de McKenzie.

(g) le délai dans cette affaire est tellement excessif comparativement au sérieux de «l'accusation» et à la simplicité des faits en cause qu'il ne pourrait en aucun cas être considéré comme raisonnable et n'est pas conforme aux principes de justice fondamentale.

Situation actuelle: Cette cause a été entendue en appel devant la Cour suprême du Canada le 24 janviet 2000. La Cour n'a pas encore rendu sa décision.

Un appel infructueux aurait dans ce cas de lourdes conséquences pour la Commission ontarienne des droits de la personne, et bien sûr pour les Commissions dans d'autres provinces. L'appel aurait vraisemblablement pour effet d'inciter les intimés à invoquet l'article 7 pour des allégations non reliées au harcèlement sexuel.

#### COUR DIVISIONNAIRE

OHRC and Mike Naraine v. Ford Motor Company of Canada Ltd., et. al. Cour supérieure de justice, Cour divisionnaire: 23 juin 1999

Le plaignant a travaillé neuf ans comme électricien chez Ford. Pendant cette période, il a constamment été l'objet de harcèlement en raison de sa race. La commission d'enquête a conclu que ce harcèlement avait empoisonné le climat de travail du plaignant et était en partie responsable des mesures disciplinaires prises contre lui par la compagnie Ford. La commission a conclu que le licenciement de M. Naraine était injustifié du fait que Ford avait négligé de tenit compte des répercussions sur était injustifie du fait que Ford avait négligé de tenit compte des répercussions sur M. Naraine de l'atmosphère de travail empoisonnée.

Ford a porté la décision de la commission d'enquête en appel devant la Cour divisionnaire.

Résultat de l'appel : Dans une décision unanime, la Cour divisionnaire a rejeté l'appel. La Cour a conclu en partie ce qui suit :

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• La Cour a fair remarquer que la commission d'enquêre, après avoir entendu tous les éléments de la preuve, était en «excellente position» pour déterminer si Ford subitait des préjudices. Sa décision dans cette affaire devait par conséquent être maintenue.

pour dommages des personnes à charge ont aussi été étendues aux partenaires du même sexe. Le projet de loi 5 modifie également d'autres lois (dont le Code) pour qu'elles s'appliquent dorénavant aux partenaires du même sexe.

## B.C. Human Rights Commission et al. v. Blencoe Cour suprême du Canada (intervention)

A l'éré 1995, deux plaintes portant sur les droits de la personne ont été déposées contre Robin Blencoe, ancien ministre du Cabinet provincial, pour harcèlement sexuel. À la fin de novembre 1997, M. Blencoe a déposé une requête en révision judiciaire de la décision de la Commission de renvoyer les plaintes devant le British Columbia Human Rights Tribunal. Il a fait valoit que le délai excessif dans le traitement des plaintes lui avait porté préjudice et portait atteinte au principe de justice naturelle.

En février 1998, le juge en chambre a rejeté la requête en révision judiciaire de M. Blencoe, qui a par la suite porté la décision en appel devant la British Columbia Court of Appeal.

Décision de la Cour d'appel : La Cour d'appel a conclu ce qui suit :

- (a) les plaintes étaient « des plaintes relativement simples» ne comportant aucune complexité particulière;
- (b) tout délai dans le traitement des plaintes doit nécessairement avoir porté préjudice à M. Blencoe;
- (c) si M. Blencoe avait fait face à des accusations criminelles pour ce type d' « agression sexuelle », ces accusations auraient fort probablement été rejetées en raison du délai;
- (d) l'aggravation d'une situation existante peut constituer une atteinte au droit à la sécutité de la personne et être contraire à l'article 7 de la Charte;
- (e) si les parties plaignantes dans les affaires d'agression sexuelle sont protégées par l'article 7 de la Charte en cas de divulgation de documents confidentiels, les intimés dans une audience pour harcèlement sexuel, et faisant face à une intrusion prolongée dans les détails intimes de leur vie pour des accusations jusque là non prouvées, ont aussi droit à la même protection;
- (f) l'opinion que privilégie de plus en plus la Cour suprême du Canada est que l'article 7 de la Charte, sous la rubrique « liberté et sécuriré de la personne », a pour objet de protéger à la fois la vie privée et la dignité des citoyens et citoyennes contre le srigmate laissé par l'humiliation publique injustifiée et prolongée du genre de celle subie par M. Blencoe en rapport avec les plaintes portées contre lui;

### DIRECTION DES SERVICES JURIDIQUES

Au cours de l'exercice 1999-2000, la Direction des services juridiques s'est occupée d'environ 147 commissions d'enquête, 21 révisions judiciaires et 11 appels, dont deux appels portés devant la Cour suprême du Canada.

Les pages qui suivent présentent les grandes lignes de quelques-unes des affaires et des décisions qui ont marqué la dernière année et qui sont dignes d'intérêt pour ceux et celles qui ont à coeur de faire avancer la cause des dtoits de la personne.

#### A P P E L S

M. v. H. Cour suprême du Canada (intervention)

La Commission est intervenue devant la Cour suprême du Canada dans l'affaire M. u. H.'. La plaignante «M.» s'est adressée au tribunal pour obtenit une ordonnance alimentaire contre «H.», son ex-partenaire du même sexe, après douze ans de vie commune. «M.» a fait valoit au début de sa requête en aliments que le fait que la définition de «conjoint» à l'article 29 de la Loi sur le droit de la famille<sup>2</sup> ne s'applique qu'aux personnes de sexe opposé, d'où l'impossibilité de présenter une demande d'aliments dans le contexte d'une union de fait entre lesbiennes, constituait une atteinte au droit à l'égalité garanti par l'article 15 de la Charte.

Décision de la Cour suprême: Le 20 mai 1999, la Cour suprême du Canada a jugé inconstitutionnelle la définition de « conjoint » donnée à la Partie III de la Loi sur le droit de la famille de l'Ontario et qui vise uniquement les personnes de sexe opposé. La Cour a déterminé que le fait de soustraire les couples homosexuels à l'application de l'article 29 de cette loi constituait une atteinte au droit à l'égalité ne pouvant être justifiée comme une limite raisonnable appliquée aux droit à l'égalité ne pouvant être vertru de l'article 29 de cette loi constituait une atteinte aux droit à l'égalité ne pouvant être de l'article 1 de la Charte. La Cour a déclaré que l'article 29 de la Loi sur le droit de l'article 1 de la Charte. La Cour a déclaré que l'article 29 de la Loi sur le droit de l'article 1 de la Charte. La Cour a déclaré que l'article 29 de la Loi sur le droit de l'article 1 de la Charte. La Cour a déclaré que l'article 29 de la Loi sur le droit de l'article 1 de la Charte. La Cour a déclaré que l'article 29 de la Loi sur le droit de l'article 1 de la Charte. La Cour a déclaré que l'article 20 de la Loi sur le

Situation actuelle: Le gouvernement provincial a donné suite à la décision de la Cour suprême en présentant le projet de loi 5 à l'Assemblée législative de l'Ontatio le 25 octobre 1999. Le projet de loi a reçu la sanction royale le 28 octobre 1999 et est entré en vigueur le 1er mars 2000. Il a modifié la Loi sur le droit de la famille le 20 novembre 1999, de sorte que les dispositions de cette loi relatives aux obligations alimentaires s'appliquent doténavant aux partenaires du même sexe. Les dispositions de la Loi sur le droit de la famille concernant le contrat familial et les réclamations de la Loi sur le droit de la famille concernant le contrat familial et les réclamations

I. Assorney General of Ontario v. M. and H., [1999] 2 S.C.R. 3. 2. Loi sur le droit de la famille, L.R.O. 1990, c.hap F. 3.

#### INITIATIVES NATIONALES ET INTERNATIONALES

#### Observations de la province de l'Ontario

La Commission contribue aux observations formulées par la province de l'Ontatio en réponse aux rapports que prépare le Canada pour remplir ses obligations aux retmes de conventions internationales. Les commentaires de la Commission mettent en lumière les politiques, activités et programmes législatifs, judiciaires et administratifs pertinents qui ont été appliqués ou qui ont eu lieu au couts de la période visée et qui se rapportent aux articles concernés des conventions. En septembre 1999, la Commission a préparé des observations sur les trois rapports suivants :

- les treizième et quatrième rapports du Canada sur la Convention internationale sur l'élimination de toutes les formes de discrimination raciale;
- 💠 le deuxième rapport du Canada sur la Convention relative aux droits de l'enfant;
- Le cinquième rapport du Canada sur la Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes.

## Association canadienne des commissions et conseils des droits de la personne (ACCDP)

LACCDP regroupe toutes les commissions et tous les conseils des droits de la personne des dix provinces, des trois territoires et du gouvernement fédéral. Au cours de l'exercice financier 1999-2000, la Commission a dirigé une initiative conjointe des organismes membres de l'ACCDP qui visait à concevoir une affiche soulignant la responsabilité de chaque personne à l'égard du respect des droits de la personne en milieu de travail. L'affiche sera dévoilée à l'occasion de la conférence de l'ACCDP qui se tiendra en mai 2000.

#### Délégations et visiteurs étrangers

Dans le cadre de son mandat de promotion des droits de la personne, la Commission a accueilli, en 1999-2000, un certain nombre de délégations et de visiteurs venus de tous les coins du monde, dont du Sri Lanka, de l'Inde, du Japon, du Chili, d'Afrique du Sud et du Migéria. Plusieurs de ces visites concernaient l'établissement ou le sourien de commissions des droits de la personne, l'échange d'information et la coopération technique.

des droits religieux, Guide du Code des droits de la personne, Vous embauchez? Pensez aux droits de la personne, Vos droits avant, pendant et après la grossesse, et un guide de consultation de la plus récente version du Code.

La Commission a aussi fait paraître une deuxième édition du recueil Politiques des droits de la personne, qui présente toutes les politiques élabotées par la Commission, y compris les plus récentes. La Commission a produit le premier manuel sur les droits des travailleurs à l'intention des employeurs, Les droits de la personne au travail.

#### UN PROGRAMME SUR LES DROITS DES AUTOCHTONES

Aux termes des articles 29 et 14 du Code, la Commission est légalement tenue de promouvoir et d'appuyer la sensibilisation du public aux droits de la personne, et de promouvoir et d'appuyer la sensibilisation du public aux droits de la personne, et des programmes spéciaux qui favorisent l'égalité des chances. Les droits des priorité à l'échelle provinciale, nationale et internationale. Compre tenu du fait que l'Ontario compre environ 20 pour 100 de la population autochtone du Canada, il est essentiel d'examiner les atteintes aux droits de la personne dont les autochtones sont victimes en raison des effets cumulatifs et aggravés de la discrimination et de leur situation de groupe défavorisé sur le plan économique, social et historique.

La Commission a établi un programme spécial dans le cadre de ses activités d'approche des communautés autochtones. Comme les autochtones de l'Ontario déposent relativement peu de plaintes concernant les droits de la personne, de nombreuses communautés autochtones n'ont qu'une expérience limitée des procédures provinciales en la matière et ne connaissent pas les services offerts par la Commission ni les mesures que celle-ci peut prendre pour défendre leurs intérêts. Certains ni les mesures que celle-ci peut prendre pour défendre leurs intérêts. Certains perçoivent le processus de traitement des plaintes comme peu réceptif ou incapable de répondre aux besoins des autochtones. Étant donné que la Commission n'est pas présente de façon concrète et soutenue au sein des communautés autochtones de l'Ontario, elle a formulé une demande de propositions en vue de la conception d'un programme spécial pour les membres des Premières nations.

Ce programme aura notamment pour buts de mieux faire connaître aux autochtones les mesures de protection prévues dans le Code, d'établir des mécanismes appropriés et adaptés sur le plan culturel pour permettre aux autochtones d'avoir accès aux services de la Commission, et d'assurer à la Commission une présence officielle et permanente au sein des communautés et des organismes autochtones.

Le programme proposé sera d'une durée de 18 mois. Les premières érapes consisteront en une recherche sur les pratiques exemplaires en matière d'éducation du public dans les communautés autochtones, une évaluation des besoins, et l'établissement de partenariats officiels avec des organismes choisis à titre de représentants des milieux autochtones.

En outre, la Commission a conclu un partenariat avec un organisme non gouvernemental de femmes francophones, le Réseau des femmes du sud de l'Ontario, afin de sensibiliser davantage le public au problème de la mutilation génitale féminaine. Il a été établi que cette pratique constitue non seulement un risque pour la santé et une forme de violence faite aux femmes, mais aussi une violation des droits de la personne en vertu du droit international. De nombreuses femmes vivant en Geratio viennent de pays ou de régions où l'on pratique la mutilation des organes génitaux féminins. De concert avec le Réseau, la Commission a produit, dans le cadre de la série « Vous avez des droits», un guide de sensibilisation à cet important problème touchant les femmes. Ce guide a été publié en français, en anglais, en arabe, en somalien, en souahéli et en amharique, et distribué aux groupes de femmes arabe, en somalien, en souahéli et en amharique, et distribué aux groupes de femmes dans l'ensemble de la province.

Au cours de la dernière année, la Commission s'est également associée au Council of Agencies Serving South Asians afin de concevoir un séminaire sur l'accès aux professions et aux métiers pour les professionnels formés à l'étranger. On travaille actuellement à l'élaboration de politiques à cet égard ainsi qu'à la mise au point d'une version multilingue en langage clair du Guide des parties plaignantes de la Commission, qui sera publiée en six langues sud-asiatiques (hindi, tamoul, punjabi, gujatati, ourdu et bengali).

La Commission a participé cette année encore, à titre de partenaire principal, au festival torontois du film et de la vidéo sur les droits de la personne, «Rights on Reel», qui s'est déroulé en décembre 1999.

Toujours en 1999-2000, la Commission a travaillé à la rédaction d'un guide d'enseignement sur les droits des personnes ayant un handicap, qui fera partie de la nouvelle version d'un manuel du personnel enseignant sur la sensibilisation aux déficiences, intitulé Discouer Together, et qui reprend certains éléments du guide L'enseignement des droits de la personne en Ontario, déjà publié par la Commission. Le manuel vise à aidet le personnel enseignant à faire connaître aux élèves diverses questions touchant les personnes handicapées et à les sensibiliset davantage aux apritudes de ces personnes. Le service de l'équité du conseil scolaire du district de Toronto vient de faire paraître une deuxième édition de cette trousse et en a distribué des exemplaires dans toutes ses écoles primaires.

Au chapitre des publications, la Commission a lancé une nouvelle série de guides en langage clait, de présentation attrayante, sur d'importantes questions de politique, dont Les droits de la personne au travail, qui traite de questions relatives à l'emploi, comme l'adaptation du milieu de travail pour les personnes handicapées, employées enceintes et le droit des conjoints de même sexe aux avantages sociaux. Le guide est facile à comprendre et fournit des renseignements pratiques aux employeurs, notamment une liste de questions à ne pas poset en entrevue et un formulaire type de demande d'emploi. Parmi les autres guides de la sétie, mentionnons La protection de demande d'emploi. Parmi les autres guides de la sétie, mentionnons La protection

années précédentes (4 500 et 3 000 respectivement). L'année 1999-2000 a donc été l'une des plus actives au chapitre de l'éducation du public. Les principales activités menées ont été les suivantes :

- discours-programmes prononcés à l'occasion des conférences de l'Association des municipalités de l'Ontario, d'Ontario Hydro, de Citoyenneté et Immigration Canada, de la Human Resources Professionals Association, de collèges et d'écoles secondaires;
- Participation à une conférence de jeunes sur la lutte contre le racisme, à Sioux Lookout, réunissant des jeunes autochtones et non autochtones du Nord-Ouest de l'Ontatio pour discuter de stratégies visant à éliminer le racisme au sein de leurs communautés;
- Présentation d'exposés à des groupes de personnes handicapées à Sudbury et à Kirkland Lake, à des propriétaires de petites entreprises à Kirkland Lake et à Timmins, à des employés municipaux à Windsor et à la Ontario Association of the Deaf à Toronto;
- \* participation à des foires d'information pour les chercheurs d'emploi ayant un handicap, à Toronto et à Brampton, pour les travailleurs en ressources humaines, à Toronto, à Durham et à Ottawa, ainsi que pour les membres du grand public lors de foires multiculturelles à Milton et à Ajax, et participation à la semaine de la fierté gaie, lesbienne, bisexuelle, transsexuelle et transgendériste de 1999;
- \* formation du personnel du centre d'appel du ministère du Travail.

En 1999-2000, la Commission a également formulé une deuxième stratégie triennale d'éducation du public sur la base de la première, qui venait à échéance le 31 mars 2000. Cette nouvelle stratégie, intitulée Getting the Message Out, définit l'orientation des activités d'éducation du public de la Commission pour les trois prochaines années, à comptet du 1er avril 2000 jusqu'au 31 mars 2003. Plus précisément, la nouvelle stratégie prévoit des activités acctues d'éducation du public dans les domaines de l'éducation et de l'emploi, davantage de campagnes thématiques et une plus forte participation du personnel et des parties intéressées à l'éducation du public.

Les partenatiats se sont révélés efficaces pour appuyer les efforts de la Commission en matière d'éducation du public. Notre première campagne de sensibilisation au harcèlement sexuel a eu lieu en 1998. L'an derniet, la Commission a mené une deuxième campagne provinciale sur le harcèlement sexuel, axée sur l'affichage de messages dans les transports en commun, partout en Ontario, et, ultérieurement, dans les succursales de la Régie des alcools. Les deux campagnes ont été menées en collaboration avec des partenaires des secteurs privé, public et sans but lucratif.

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spécialistes et universitaires renommés dans le domaine des droits de la personne. Phomme des Nations Unies, un membre du sénat canadien, ainsi que plusieurs Loi canadienne sur les droits de la personne, un membre du Comité des droits de

prendre une part accrue à la protection et à la promotion des droits de la personne. Canada, ainsi qu'à élaborer des stratégies qui permettront aux commissions de personne du pays à mieux faire face aux changements sociaux qui se produisent au qu'il a ratifiés. Cet échange d'information aidera les commissions des droits de la des droits de la personne, telles qu'énoncées dans les conventions, traités et protocoles veiller à ce que le Canada remplisse ses obligations internationales dans le domaine discuté du rôle que les commissions des droits de la personne peuvent jouer pour tion systémique sont au nombre des nouvelles questions à l'étude. On a également rends et le recours à un modèle axé sur les plaintes pour lutter contre la discriminapersonne. Les droits économiques et sociaux, le règlement extrajudiciaire des diffésions de ces tendances et fairs nouveaux sur le rôle des commissions des droits de la des nouvelles réalités constatées à l'échelle internationale, et d'examiner les répercus-Cette rencontre a permis aux participants de discuter des tendances sociales et

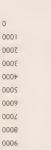
#### EDUCATION DU PUBLIC

discriminatoires qui portent atteinte aux droits reconnus dans la présente loi». public, et entreprendre, diviger et encourager la recherche visant à éliminer les pratiques ub noitacubé b 19 noitamrofní b esmmargorq esb sruusa ne sritem 19 revodulé niob matière d'éducation du public. En particulier, l'alinéa 29 d) stipule que la Commission la Commission ontarienne des droits de la personne, y compris ses responsabilités en du mandat de la Commission. L'article 29 du Code énonce les diverses fonctions de La promotion des droits de la personne constitue une partie tout aussi importante

aux activités d'éducation public Nombre de participants

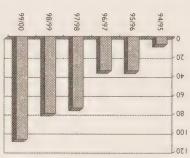
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Activités d'éducation du public

presque le double et le triple du nombre de personnes formées au cours des deux du public et dispensé une formation à plus de 8 600 personnes, ce qui représente L'an dernier, le personnel de la Commission a participé à 108 activités d'éducation

Le jugement rendu en 1992 par la Cour suprême du Canada dans l'affaire Bates v. Zurich Insurance invite l'industrie de l'assurance à envisager le recours à des méthodes de rechange non discriminatoires en matière de tarification de l'assurance-automobile. La Cour a jugé que l'industrie de l'assurance pouvait continuer à utiliser des critères discriminatoires comme l'âge et l'état matrimonial comme moyen légitime d'évaluer les risques, mais qu'il ne lui serait peut-être pas possible de le faire indéfiniment.

A la lumière de ces observations, et compte tenu de la relative rareté des études sur les droits de la personne dans l'industrie ontarienne de l'assurance, la Commission a préparé un document de travail, paru en octobre 1999, afin d'amorter un dialogue sur la protection des droits de la personne dans ce domaine et d'examiner différentes solutions de rechange aux pratiques actuelles. Pour ce faire, elle a consulté des représentants de l'industrie, des autorités de réglementation et des assurés. Le document traite des pouvoirs législatifs en matière d'assurance, des dispositions applicables du Code et des problèmes de discrimination dans le domaine de l'assurance.

Dans le cadre de cerre consultation, un certain nombre de parties intéressées ont présenté des observations, et la Commission a rencontré plusieurs représentants des secreurs de l'assurance-vie, de l'assurance-invalidité et de l'assurance-automobile. La Commission publiera le rapport de consultation au cours de l'assurance qui vient et correspondra avec les principaux intéressés au sujet des questions soulevées durant la consultation. Au nombre des grandes orientations qui seront énoncées dans ce rapport, la Commission recommandera que l'industrie, les gouvernements et les clients port, la Commission recommandera qui leur permettra de poursuivre le dialogue sur élaborent ensemble un mécanisme qui leur permettra de poursuivre le dialogue sur les questions liées aux droits de la personne dans le domaine de l'assurance.

#### Dialogue sur les politiques

En février 2000, la Commission a tenu, en collaboration avec la Fondation canadienne des droits de la personne, une première journée de dialogue sur les politiques, intitulée Human Rigbts Commissions: Future Directions. Cette séance de discussion avait pour but de réunit divers intervenants canadiens et étrangers afin d'analyser la manière dont les organismes de défense des droits de la personne, les membres du public et les gouvernements travaillent ensemble pour définit les problèmes à résoudre, les progrès réalisés et les défis à relever dans le domaine des droits de la personne, et pour formuler des attatégies à long terme.

Des représentants de la Commission ontarienne des droits de la personne,

d'autres commissions des droits de la personne au pays, du gouvernement de l'Ontario et d'organismes non gouvernementaux (ONG) oeuvrant dans le domaine ont participé à cette rencontre. De plus, nous avons eu le privilège d'accueillir le conseiller spécial pour les institutions nationales du Haut Commissariat des Nations Unies aux droits de l'homme (Genève), un membre du Comité d'examen de la

#### Sondage sur l'accessibilité des transports en commun

Dans le cadre de son engagement soutenu à l'égatd des questions touchant les personnes handicapées, la Commission a mené en 1999-2000 un sondage auprès des principales commissions de transport en commun des municipalités de l'Ontatio en vue d'évaluer leurs initiatives actuelles et projetées pour rendre leurs services accessibles aux personnes handicapées. Les conclusions de l'évaluation permettront à la Commission de déterminer l'élaboration des politiques actuelles et futures dans le domaine des mesures d'adaptation pour les personnes handicapées, en plaçant un accent particulier sur les services de transport.

A la lumière d'une décision que la Cour suprême du Canada a rendue en 1997, la Commission favorise une approche intégrée en ce qui a trait aux transports en commun, qui sont perçus comme une exigence sociale de base. En pratique, cela signifie que les municipalités doivent s'efforcer de rendre leurs réseaux de transport en commun aussi accessibles que possible. En outre, lorsque certains usagers ne peuvent accédet à ces services même après la mise en place de mesures d'adaptation, les municipalités doivent offrit d'autres solutions de transport adapté, comme le service municipalités doivent offrit d'autres solutions de transport adapté, comme le service mesures d'adaptation en fonction du critère du préjudice injustifié. Au cours du prochain exercice, la Commission publiera un sondage sur l'accessibilité des services de transport en commun en Ontario.

#### Document de travail sur la discrimination fondée sur l'âge

Les Nations Unies ayant proclamé 1999 l'Année internationale des personnes âgées, la Commission a préparé, en 1999-2000, un document de travail sur la discrimination fondée sur l'âge. Ce document, dont la rédaction s'inscrit dans le mandat de grands formission, qui prévoit notamment l'élaboration de politiques découlant des grands principes du Code, examine les questions relatives aux droits des personnes âgées de l'Ontatio en ce qui touche l'emploi, le logement et l'accès aux services et aux installations. On y fait état des tendances démographiques, des questions sociales et économiques générales liées à la discrimination fondée sur l'âge, de la jurisprudence en la matière et des gentes de cas qui se dégagent des plaintes reçues jurisprudence en la matière et des gentes de cas qui se dégagent des plaintes reçues consultation publique, et la Commission contenue dans ce document servira de base à une consultation publique, et la Commission élaborera une politique publique officielle sur le sujet au couts des deux prochaines années.

#### Document de travail sur l'assurance

Conformément au mandat que lui confère le Code, aux termes duquel elle doit promouvoir la compréhension des droits de la personne et la sensibilisation du public à cet égard, la Commission a entrepris un projet de recherche sur les droits de la personne dans le domaine de l'assurance.

l'intention des personnes handicapées, des regroupements de personnes handicapées, des employeurs, des établissements d'enseignement, des études d'avocats, des syndicats, des organismes publics provinciaux et municipaux, des entreprises, des associations commerciales ainsi que des fournisseurs de services.

La Commission a en outre sollicité des avis sur deux questions de politiques

précises. La première concernait l'interprétation de « la norme de préjudice injustifié » à la lumière de la norme de caractère raisonnable établie dans la décision Eldridge v. British Columbia (Attorney General) de 1997. La deuxième concernait «l'acceptation volontaire des risques», une question qui se pose lorsqu'une personne handicapée accepte de plein gré de courir un risque pour sa santé et sa sécurité (après adaptation des installations à ses besoins), lorsqu'elle seule court ce risque.

La Commission a recueilli des points de vue variés. Les membres de la communauté des personnes handicapées appuyaient la norme actuelle de préjudice injustifié et les normes d'adaptation établies par le Code. Toutefois, des représentants du monde des affaires et du patronat estimaient que la norme sur les coûts était trop onéreuse. Ils préconisaient plutôt une norme de caractère raisonnable ainsi qu'une révision de l'évaluation des coûts. Les fournisseurs de services éducatifs appuyaient la norme de préjudice injustifié, mais ils étaient d'avis que des facteurs autres que les coûts devraient déterminer ce qui constitue un préjudice injustifié. Les membres de soutes des sourds ont indiqué que les gouvernements, qui constituent souvent les seules sources de financement des mesures d'adaptation, ont le devoir souvent les seules sources de financement des mesures d'adaptation, ont le devoir s'appliquet à eux.

Les intervenants ont également soulevé un certain nombre d'autres questions, dont les suivantes: la définition de «tâches essentielles»; les mesures d'adaptation permettant la réintégration au poste de travail occupé avant une blessure ou l'affectation à un autre poste; l'interaction d'autres lois avec le Code en ce qui a trait aux denoits des employés et à d'autres aspects généraux relatifs à la santé et à la sécurité; le faible niveau d'intégration, à l'analyse des droits de la personne, des décisions issues d'un arbitrage dans le contexte des relations de travail; ainsi que la vulnérabilité des travailleurs ayant un handicap dans les lieux de travail non syndiqués.

Les réactions considérables que les consultations de la Commission ont suscitées démontrent que les intervenants s'en remettent aux Directives pour déterminer la façon d'assumer leur obligation d'offrir des mesures d'adaptation dans diverses situations. La Commission a l'intention de publier une version révisée de ses Directives l'an prochain. La version révisée évaluera les conséquences des décisions rendues par les tribunaux et les commissions d'enquêre ces dix dernières années et tiendra compte de leurs répercussions sur les normes définies dans les Directives. Les Directives fourniront également aux employeurs une side plus précise afin d'organiser le processus d'offre de mesures d'adaptation.

#### Identité sexuelle

Le manque de compréhension et d'information à l'égatd des questions touchant les transgendéristes existe dans tous les segments sociaux. Il y a deux ans, en mats 1998, à l'occasion de la conférence tenue par l'International Foundation for Gender Equality, le commissaire en chef a pris l'engagement que la Commission entreprendrait l'élaboration d'une politique en consultation avec la communauté transgendériste. Des recherches, des consultations et des réunions ont ensuire été organisées avec la collaboration de la communauté transgendériste, des professionnels de la santé et des représentants officiels choisis.

A la suite de ces consultations, la Commission a préparé un document de travail intitulé Vers une politique de la Commission sur l'identité sexuelle. Ce document à été distribué en octobre 1999 auprès des membres de la communauté transgendériste et des autres personnes intéressées.

Se fondant sur les commentaires reçus, la Commission a approuvé un énoncé de politique officielle sur l'identité sexuelle. Cette politique se fonde sur les travaux qui ont été accomplis jusqu'à maintenant, dont des recherches, des consultations communautaires, des entrevues menées auprès de professionnels de la santé et de représentants officiels choisis, et un examen de la jurisprudence marquante dans ce domaine. Le document décrit les principaux obstacles et problèmes auxquels se heurtent les transgendéristes.

Malgré le nombre relativement restreint de plaintes dans ce domaine, la discrimination, le harcèlement et la stigmatisation dont souffrent les transgendéristes n'en demeurent pas moins bien réels. Grâce à sa politique, la Commission vise à promouvoir la sensibilisation à l'égard de l'identité sexuelle, à dissiper les stéréotypes et les mythes, et à prévenir la discrimination et le harcèlement attribuables à l'identité sexuelle.

#### Protection des personnes handicapées

## Directives pour l'évaluation des besoins en matière d'adaptation des personnes handicapées

La Commission a publié ses Directives pour l'évaluation des besoins en matière d'adaptation des personnes handicapées en 1989. Depuis, ces directives n'ont fait l'objet d'aucune modification, même s'il s'est produit plusieurs changements importants sut le plan jutidique et que de nouvelles questions apparaissent.

La Commission a donc mené des consultations intensives auprès d'environ 150 personnes intéressées afin d'évaluer les besoins en matière de révisions et de recueillir des opinions sur les modifications des directives qu'elle se propose d'effectuer. La Commission a consulté entre autres des usagers des services à

élabore une politique explicite au sujet du droit des femmes d'allaitet en public si elles le veulent, ce qui inclut le droit de ne pas être détangées et celui d'avoit accès à des services. Les femmes qui allaitent ont le même droit de se prévaloit de services, sans discrimination, que toutes les autres personnes de l'Ontatio.

Par suite de ce règlement, la Commission a clarifié et élargi son interprétation du droit d'allaiter et révisé sa Politique concernant la discrimination liée à la grossesse pour qu'elle protège le droit d'allaiter dans les endroits publics. La Commission a en notre préparé une version en langage simple de sa Politique concernant la discriminmation liée à la grossesse ainsi qu'un dépliant intitulé Vos droits de mère qui allaite. Ces deux documents ont été distribués auprès des bureaux de santé et des associations de sages-femmes de toute la province au cours de la semaine nationale de l'allaite-d'adaptation en milieu de travail fait également partie de la Politique concernant d'adaptation en milieu de travail fait également partie de la Politique concernant la discrimination liée à la grossesse.

#### Orientation sexuelle

Le 20 mai 1999, la Cour suprême du Canada a rendu sa décision dans l'affaire de deux personnes de sexe opposé qui figurait dans la partie III de la Loi sur la réforme du droit de la famille de l'Ontario était inconstitutionnelle. Le gouvernement de l'Ontario a donc déposé le projet de loi 5, Loi modifiant certaines lois en raison de la décision de la Cour suprême du Canada dans l'arrêt M. c. H., afin d'inclure le motif du statut de conjoint de même sexe. La Loi modifie 67 lois de l'Ontario, dont le sexuelle au cours de l'exercice, sous le titre Politique toncernant la discrimination et le harcèlement fondés sur l'orientation sexuelle au cours de l'exercice, sous le titre Politique concernant la discrimination et cations apportées par le projet de loi 5 et fournit des directives claires relativement à l'égalité de toutes les projet de loi 5 et fournit des directives claires relativement à l'égalité de toutes les personnes en Ontario, sans égatd à leur orientation sexuelle.

Publiée en février 2000, la politique établit de quelle façon le Code protège contre la discrimination et le harcèlement en raison de l'orientation sexuelle. Elle est conçue pour améliorer la compréhension des questions liées à l'orientation sexuelle. En particulier, la politique peut servir aux employeurs et aux fournisseurs de services et de logements à mieux comprendre leurs responsabilités aux termes du Code, ainsi que la nécessité de traiter tous les Ontariens et toutes les Ontariennes sur un pied d'égalité.

Le commissaire en chef a écrit au procureur général au sujet de certaines des lois modifiées par le projet de loi 5 et d'autres lois ontariennes pouvant présenter des incidences pour les conjoints de même sexe. Le commissaire en chef a soulevé plusieurs questions relatives à ces lois telles que l'égalité véritable, la dignité du couple homosexuel et la conformité au Code.

#### A PROPOS DE LA COMMISSION

La Commission ontatienne des droits de la personne (la «Commission») est un organisme indépendant du gouvernement et elle rend compte de ses activités à l'Assemblée législative, par l'intermédiaire de la ministre des Affaires civiques, de la Culture et des Loisirs. Ses principales fonctions, énoncées dans le Code des droits de la personne (le «Code»), comprennent l'enquête sur les plaintes pour atteinte aux droits de la personne et le règlement de ces plaintes. Selon le Code, la Commission doit en outre assurer la promotion des droits de la personne et la sensibilisation du public.

## LA DIRECTION DES POLITIQUES ET DE L'ÉDUCATION PROMOTION ET SENSIBILISATION DES DROITS DE LA PERSONNE

#### ÉLABORATION DE POLITIQUES

Conformément à son mandat qui consiste à promouvoir une meilleure compréhension des sion des droits de la personne et à encourager la recherche axée sur l'élimination des pratiques discriminatoires, la Commission a entrepris un certain nombre d'initiatives visant à élaborer des politiques en 1999-2000. Elle a mené plusieurs consultations et publié des documents de travail sur des politiques relatives à des questions émergentes. Elle a mis à jour nombre de politiques et présenté de nouvelles politiques, dans le but d'aidet son personnel, les membres du public et toutes les personnes qui s'intéressent aux droits de la personne à comprendre, à interpréter et à appliquer le Code. Nous présentons ci-dessous les points saillants du dernier exercice.

#### Grossesse et allaitement

Aux termes du paragraphe 10 (2) du Code, «le droit à un traitement égal sans discrimination crimination fondée sur le sexe inclut le droit à un traitement égal sans discrimination fondée sur le fait qu'une femme est enceinte ou peut le devenir». Le fait de donnet naissance et l'allaitement font naturellement partie de la maternité et sont intrinsèquement liés au droit à un traitement égal sans discrimination fondée sur le sexe. Le refus de fournir un service à une femme enceinte ou qui allaite constitue une infraction au Code, cat il s'agit de discrimination fondée sur le sexe.

En février 1999, la Commission a réglé une plainte découlant d'un incident mettant en cause une femme qui donnait le sein à son enfant dans un restaurant et à qui la direction du restaurant a demandé de cesser l'allaitement, de se rendre dans les toilettes du restaurant ou de quitter les lieux. Un élément clé du règlement était une demande émanant de la plaignante et des intimés pour que la Commission une demande émanant de la plaignante et des intimés pour que la Commission

Commission a apporté une contribution remarquable aux efforts que Au cours des quatre dernières années, le personnel de la qualité des services qu'elle offre à la population de notre province. accompli des progrès considérables en vue de rehausser le niveau et la le quatrième exercice consécutif au cours duquel la Commission a ontarienne des droits de la personne. L'exercice 1999-2000 constitue ainsi qu'à la population de l'Ontario, des activités de la Commission Affaires civiques, de la Culture et des Loisirs, à l'Assemblée législative, J'ai de nouveau le plaisir de rendre compte à l'honorable ministre des



sur les droits de la personne au Canada. au personnel de la Commission, qui se trouve à l'avant-garde dans l'élaboration de politiques d'obtenir les meilleurs conseils qui soient en matière de droits de la personne en s'adressant Code. Les employeurs, les employés et tous les membres du public ont maintenant l'assurance nouvelles politiques et lignes directrices afin de favoriser l'interprétation et l'application du a rejoint directement plus de 8 000 personnes cette année. Elle a également élaboré de efficace, la Commission a continué à élargir son mandat lié à l'éducation du public et elle Canada dans le domaine des droits de la personne et d'y parvenir de façon de plus en plus droits de la personne (Ontario). En plus d'assumer la charge de causes la plus volumineuse au plus efficacement la politique publique établie par l'Assemblée législative dans le Code des déploie la Commission, en tant qu'organisme au service de la population, afin d'appliquer

normalement régler en une année. système un moins grand nombre de dossiers actifs que le nombre que nous pouvons qui étaient en suspens depuis longremps ont maintenant été réglées et nous avons dans notre tout le retard que nous accusions dans le règlement des plaintes. Presque toutes les plaintes intensive offette à tous les membres de notre personnel, nous avons réussi à rattraper presque gestion de cas perfectionné, au recours à la médiation volontaire et à une nouvelle formation de travail très lourde. Au cours des trois dernières années, grâce à l'adoption d'un système de je reconnais que la Commission a par le passé éprouvé des difficultés à faire face à une charge Bien que je tienne à souligner qu'il ne s'agit pas uniquement d'une question de chiffres,

et qu'elle aide, mieux que jamais au couts des detnières années, l'Ontario et le Canada à affirmer que la Commission répond maintenant aux besoins de la population de la province Par conséquent, je vous remets le présent rapport avec un grand optimisme, car je puis

respecter leurs engagements internationaux en matière de droits de la personne.

Le commissaire en chef,

Keith C. Norton, c.r., B.A., LL.B



Ontario Human Rights Commission Commission ontarienne des droits de la personne

Commissaire en chef

Chief Commissioner

Tel: 416.314.4541

180 Dundas Street West Prononto OM MA 2R9 180 rue Dundas ouest Toronto OM MA 2R9 Tél : 416.314.4541 0002 niul

L'honorable Helen Johns Ministre des Affaires civiques, de la Culture et des Loisirs 6<sup>e</sup> étage, 400, rue University Toronto (Ontario) M7A 2R9

Madame la ministre,

Conformément au paragraphe 31(1) du Code des droits de la personne de l'Ontario, j'ai le plaisir de vous remettre le rapport annuel de la Commission ontarienne des droits de la personne pour l'exercice 1999-2000, en vue de son dépôt à l'Assemblée législative de l'Ontario.

Ce rapport présente les activités de la Commission pour l'exercice se terminant au 31 mars 2000.

Veuillez agréer, Madame la ministre, l'expression de ma haute considération.

Le commissaire en chef,

Land

Keith C. Norton, c.r., B.A., LL.B.



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Pour de plus amples renseignements, appelez en confiance : Tél. : 1-800-387-9080

ATS: 416-314-6526 ou 1-800-308-5561 Web Site: www.ohtc.on.ca

Human Rights Ontario

droits de la personne Commission ontarienne des Commission

## 1999-2000 RAPPORT ANNUEL

Toronto, Ontario, MAA 2R9 8e étage, 180 rue Dundas Ouest Commission ontarienne des droits de la personne

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## ANNUAL REPORT

2000 - 2001





Ontario Human Rights Commission Commission ontarienne des droits de la personne



# ANNUAL REPORT 2000-2001

Ontario Human Rights Commission 180 Dundas Street West, 8th floor Toronto, Ontario, M7A 2R9

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Ontario Human Rights Commission

Chief Commissioner

180 Dundas Street West Toronto ON M7A 2R9 Tel (416) 314-4541 Commission ontarienne des droits de la personne

Commissaire en chef

180 rue Dundas ouest Toronto ON M7A 2R9 Tél (416) 314-4541



June, 2001

Honourable Cam Jackson
Minister of Citizenship
6<sup>th</sup> Floor, 400 University Avenue
Toronto, Ontario
M7A 2R9

Dear Minister:

Pursuant to Section 31(1) of the *Ontario Human Rights Code*, it is my pleasure to provide to you the Annual Report of the Ontario Human Rights Commission for the fiscal year 2000 – 2001, for submission to the Legislative Assembly of Ontario.

This report reflects the activities of the Commission to March 31, 2001.

Yours sincerely,

Keith C. Norton, Q.C., B.A., LL.B

Chief Commissioner

#### MESSAGE FROM THE CHIEF COMMISSIONER



I am pleased to report on the work of the Ontario Human Rights Commission for the fiscal year 2000 - 2001.

This year, for the fifth year in a row, the Commission closed more cases (1,941) than it opened (1,775). Through the use of effective caseload management including voluntary mediation, the average age of cases is now 10.4 months; the median age is seven months.

Reducing the size of the caseload has allowed

Commission staff to pursue public policy initiatives and programs with greater vigour. This year, the Commission unveiled a major public education campaign in conjunction with its updated *Policy on Discrimination Because of Pregnancy*. The posters underscored the right of women to nurse their babies in public or the workplace, or rather, reinforced the right of babies to be fed in public.

The Commission also released a new *Policy and Guidelines on Disability* and the *Duty to Accommodate* that replaces a set of guidelines established in 1989. It incorporates critical thinking from academics, the courts and adjudicators across the country. The Commission also released the following policies:

- the updated Policy on Drug and Alcohol Testing,
- the updated Policy on Female Genital Mutilation, and
- the new *Policy on Discrimination and Harassment because of Gender Identity*, which highlights the need for society to recognize the rights of transgendered persons.

The Commission attracted public and media attention with its Discussion Paper, Discrimination and Age: Human Rights Issues Facing Older Persons in Ontario. By the year 2021, there will be over three million Ontarians over the age of 65. Regrettably, there is a general perception that discriminating on the basis of age is a lesser form of discrimination and not really a serious issue. The Commission does not agree and by the response of the participants during the public consultations held last Fall, this is an issue that will inform future policy work.

The Commission also entered into new partnerships and strengthened existing relationships with the private and non-profit sectors for the production of important educational resources including a new compendium of Commission policies and a video on racism. We are also proud of the partnership we have

formed with Ontario's Aboriginal communities to work together to increase awareness of the Ontario *Human Rights Code* and the Commission's work.

And finally, I want to express my gratitude to the dedicated and hard-working staff of the Commission without whom the progress we have made these past few years would not have been possible.

Keith C. Norton, Q.C., B.A., LL.B.

Chief Commissioner

#### ABOUT THE COMMISSION

The Ontario Human Rights Commission (the "Commission") is an arm's length agency of government, accountable to the Legislature of Ontario through the Minister of Citizenship. The Commission's principal functions are set out in the Ontario Human Rights Code (the "Code") and include the investigation and settlement of human rights complaints. Under the Code, the Commission's work also includes promoting human rights and public awareness.

# POLICY AND EDUCATION BRANCH PROMOTION AND AWARENESS OF HUMAN RIGHTS

#### POLICY DEVELOPMENT

In keeping with its mandate to promote greater understanding of human rights and encourage research to eliminate discriminatory practices, the Commission undertook a number of policy development initiatives in 2000-2001.

The Commission held public meetings and issued discussion papers to the public and media on emerging human rights policy areas. New policies were introduced and several policies were updated. The Commission also embarked on a major public education campaign.

The Commission's policies and guidelines are approved public statements that set out the Commission's interpretation of specific provisions of the *Code*. The purpose of these policies and guidelines is to help Commission staff, members of the public and those involved in human rights work to interpret and understand how the *Code* is applied.

Highlights of the past year are outlined below.

#### Age Discrimination

The Commission undertook significant work in the area of age discrimination. The Chief Commissioner noted that there appears to be a general acceptance that discriminating on the basis of age is less offensive than discrimination on the grounds of race or sex. As the population of the province is aging, this is becoming an important human rights issue. In July 2000, the Commission

released a Discussion Paper entitled Discrimination and Age: Human Rights Issues Facing Older Persons in Ontario.

The Paper identifies trends and critical issues related to age and makes recommendations to promote the human rights of older persons. Currently, age is cited as a ground in nine per cent of complaints received by the Commission, a majority of which arise in the employment context. The Paper also raises the issue of mandatory retirement and suggests that older workers, who choose to work after the age of 65 and are able to do so, should have the benefit of human rights protections. The release of this Paper fulfills a commitment made in 1999 to undertake research and policy development on age discrimination.

Response to the Discussion Paper was so positive that the Commission decided to launch province-wide consultations on human rights issues facing older persons.

As a framework for the Consultations, the Commission released a Consultation Paper entitled *The Changing Face of Ontario: Discrimination and our Aging Population*. The Paper sets out specific issues on which the



Commission sought input such as access to health care, social services, housing and protection for older workers. Interested individuals and organizations were invited to provide written submissions. In the late Fall, the Commission held public consultation sessions in London, Toronto, Ottawa and Sudbury. Members of the public participated and made submissions on human rights issues facing older persons. The Commission's efforts in this area generated intense public and media interest.

#### Disability

This year, the Commission worked on several major initiatives related to disability rights. Forty per cent of complaints filed with the Commission are from persons with disabilities. Studies show that persons with disabilities continue to experience widespread and endemic discrimination in all aspects of their daily lives.

In the past fiscal year, the Commission released three key documents as a starting point to address the issue of disability.

#### Policy on Drug and Alcohol Testing:

In 2000-2001, the Commission updated its *Policy on Drug and Alcohol Testing* to reflect the Ontario Court of Appeal's recent decision in *Entrop v. Imperial Oil Ltd.* This was a human rights case involving the introduction of a workplace policy implementing random drug and alcohol testing. It required employees in safety-sensitive positions to disclose a past or current substance abuse problem.

The Commission's revised Policy incorporates the Court's rulings on a number of issues. It includes the legal confirmation that both drug and alcohol dependencies are disabilities within the meaning of the *Code*. The Policy also sets out guidelines on the use of drug and alcohol testing, including the requirements surrounding pre-employment drug testing, random drug testing, random alcohol testing, the use of breathalyzers, required disclosures of past substance abuse problems and automatic reassignment or termination.

## Policy and Guidelines on Disability and the Duty to Accommodate:

Many employers and other organizations have little understanding of their legal obligations under the *Code*. In March 2000, the Commission released its *Policy and Guidelines on Disability and the Duty to Accommodate*. This Policy replaces the previous set of guidelines established in 1989. In launching the new Policy, the Chief Commissioner emphasized that all parties involved – employers, corporations and individuals – need to work together and take the appropriate action to accommodate the needs of persons with disabilities.

The new Policy creates a framework for promoting and clarifying the rights of persons with disabilities to ensure that they can be full and vital participants in community life and in the workplace. The development of the new Policy was based on consultations with over 150 stakeholders, including persons with disabilities, advocacy groups, employers, service providers and associations. The final document is the result of an extensive review process of existing Commission standards and the many submissions it received.

#### Key elements include:

- a focus on the dignity of the person and on the person's full integration and participation in society;
- the obligation to design programs and facilities with persons with disabilities in mind;

- specific recognition of the rights of persons with non-evident disabilities, including mental disabilities;
- guidance for employers and unions, including how to handle return-towork situations and access to alternative jobs; and
- a high standard for meeting the requirements of the *Human Rights Code* and for accommodating persons with disabilities.

The Commission's follow-up work over the next fiscal year will involve consulting with the public to develop workplace guides in plain language for both employers and employees. It will also initiate consultations on disability in the education sector.

## Discussion Paper on Public Transit Accessibility:

The Commission released the Discussion Paper on Accessible Transit Services in Ontario. The Paper analyzes the accessibility of transit systems in Ontario and the obligations transit service providers have under human rights law. Access to public transit services is an important human rights issue. When persons with disabilities, older persons and families with young children cannot use their local public transit system, they are effectively prevented from participating in community life.

The Paper follows a survey conducted in July 1999 on the accessibility of transit systems in Ontario. The survey revealed several gaps in the accessibility of mainstream transit systems and major discrepancies in the level of paratransit services across the province. In the Toronto area, entire portions of the transit system are completely inaccessible including Toronto Transit Commission (TTC) streetcars, most GO transit buses and the majority of subway stations. The current situation shows that more work needs to be done in this area.

Throughout the Spring of 2001, the Commission continued to solicit written submissions from individuals and organizations regarding the issues raised in this Paper. This will form part of the Commission's work over the coming year.

As part of the Commission's new approach to disability rights, six cases were sent to the Board of Inquiry challenging the lack of accessibility to the transit services in Hamilton, Ontario. The six cases are complaints by two people who have limited mobility and cannot use the regular public transit system. Yet, because of the uneven route schedules and restrictive eligibility criteria, they are also limited in using the paratransit system designed and maintained for people with disabilities.

## Aboriginal Human Rights Initiative

In the fiscal year 2000-2001, the Commission undertook a key initiative relating to Aboriginal peoples. Historically, Aboriginal persons in Ontario have filed relatively few human rights complaints, many Aboriginal communities have little experience with the provincial human rights process and are either unaware of the Commission's services or its ability to serve Aboriginal interests. Others view the human rights process as unresponsive or irrelevant to the needs of Aboriginal persons.

The goals of the initiative are to create and enhance awareness among Aboriginal communities of the *Code*, to develop appropriate and culturally sensitive ways to enable members of these communities to access the Commission's services, and to develop a continuing presence within Aboriginal communities and organizations.

Two Aboriginal organizations, Grand River Employment and Training and the Ontario Federation of Indian Friendship Centres are involved in the development and delivery of this project.

## First Phase of the Initiative:

The first phase involved consultations with 37 Aboriginal organizations across the province, many of which had little or no knowledge of the Commission and its work. In addition, over 80 percent of the organizations cited significant discrimination in housing for their off-reserve clients. Unequal treatment was also cited in the areas of policing, health, social services and legal services.

The high rate of discrimination in housing among the Aboriginal community members contrasts significantly with the experiences of Ontario's general population. For example, at the Commission, three quarters of the complaints it receives occur in the area of employment. Yet, in the Aboriginal communities, employment discrimination is lower down on the list of Aboriginal human rights issues. Such information reinforces the need for this initiative in order for the Commission to appropriately respond to the unique human rights issues faced by Aboriginal Ontarians.

Racism, levels of literacy and a general mistrust of non-Aboriginal institutions were identified as key barriers that prevent Aboriginal persons from using the Commission's services. In addition, the lack of visibility and accessibility of the Commission within the Aboriginal community is a main reason why Aboriginal people are not accessing the Commission's existing programs. The

report on the first phase also includes a number of important recommendations of measures that the Commission can take to increase its presence in the Aboriginal communities.

## Second Phase of the Initiative:

The Commission is proceeding with the second phase of this project over the coming fiscal year, which will involve training workshops, public education programs and a pilot community-based awareness campaign program.

## Gender Identity

Following the release of a Discussion Paper on gender identity in October 1999, the Commission developed a formal policy that addresses the issue of human rights for transgendered people. These are people who do not identify or reject in whole or in part their birth-assigned gender identity.

The Policy on Discrimination and Harassment because of Gender Identity outlines the major barriers and issues transgendered people encounter. It also confirms that transgendered people have the right to equal treatment without discrimination under the Code on the ground of sex. The Policy is based on research, community consultations and interviews and seeks to dispel stereotypes and myths that foster discrimination and harassment of the transgendered.

## Policy on Female Genital Mutilation ("FGM")

FGM is the practice of female genital mutilation which has been recognized as a human rights issue under international law, and also as a health hazard and a form of violence against women and girls. The Commission's Policy was updated with the addition of a new section that reflects recent developments under the *Ontario Child and Family Services Act*. It now includes a duty to report information with respect to a child who is in need of protection and references amendments under the *Criminal Code* that define the performance of FGM as aggravated assault.

#### PUBLIC EDUCATION

The Commission developed a new three-year Public Education Strategy that sets out its public education activities for the years 2000-2003. Entitled, *Getting the Message Out*, the strategy supports the Commission's mandate under the *Code* to promote and advance awareness of human rights through visible and effective public education. Community partners and stakeholders were invited to provide input into the strategy.

The use of thematic campaigns as an important public education vehicle is a key part of the strategy. In addition, the three-year strategy commits the Commission to developing and enhancing partnerships (public, private and not-for-profit) and highlights the need for a plan that will promote effective relations with various stakeholders.

The Commission also redesigned its Web site (www.ohrc.on.ca) in March 2001. The new site is more user-friendly and accessible and offers information on the complaint process, Commission's policies and publications and case summaries.

## **Events & Presentations**

For the sixth consecutive year, a larger audience has been present at events either sponsored by or involving the Commission.

During the 2000-2001 fiscal year, Commission staff participated in 103 public education events involving over 9,300 individuals.

In its ongoing efforts to maintain a high standard of excellence, the Commission instituted a process for evaluating its public education sessions. Using a standard evaluation form, participants were asked to evaluate the expertise of the presenters, effectiveness of the materials and the usefulness of the information presented on a scale of one to five. Eighty per cent of participants gave the Commission's presentations four or five for excellence. This ongoing feedback will be used to improve the Commission's expertise in delivering presentations.

The Chief Commissioner made keynote presentations at the Annual General Meeting of the *Ontario Association for Community Living, Lancaster House Publishing* and the conference, *Diversity Update 2001*. He also spoke at legal conferences, law schools, and elementary and secondary schools.

## **Number of Persons Reached in Public Education**



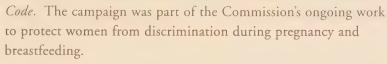
#### Outreach

The Commission's public face was visible at a number of community festivals and fairs, notably, the Ajax Multicultural Festival, Toronto's Lesbian and Gay Pride Day and the JobsMART for Persons with Disabilities. At each event, the Commission provided a portable display unit that highlights its work and Commission staff members who answered questions and distributed information. The Commission's participation at these events is always well received.

## **Partnerships**

The Commission launched a province-wide campaign in partnership with the Infant Feeding Action Coalition (INFACT) Canada and Toronto Public Health to promote children's health and breastfeeding as human rights issues. The campaign featured an ad that appeared on municipal transit vehicles across the province and a platform poster that was displayed in high traffic subway stations in Toronto.

The advertisements were designed to help eliminate discriminatory practices against mothers and children. They also supported the Commission's mandate to increase awareness of human rights and protections for women under the



The Commission has developed a strong alliance with the *Human Resources Professionals Association of Ontario* (HRPAO). This relationship continues to grow. During the 2000 – 2001 fiscal year, Commission staff participated in a full day educational conference for HRPAO members on Human Rights in the Workplace, took



part in the HRPAO Annual Conference and addressed a provincial meeting of HRPAO chapter presidents. The Commission has since made presentations to groups sponsored by HRPAO chapters in Kingston and Halton.

The Commission entered into a new partnership with CCH Canadian Limited to produce a revised version of *Human Rights Policy in Ontario*, the compendium of all new and revised policies released by the Commission. These policies will continue to be posted on the Commission's Web site (www.ohrc.on.ca) in order to be freely accessible to the general public.

The Commission also began a project with the Canadian Race Relations Foundation (CRRF) and a number of other partners to develop a training video and study guide dealing with racism which will serve as a useful tool in schools and workplaces. This project was an outgrowth of the CRRF's earlier campaign See People for Who They Really Are: Unite Against Racism during which it produced several short public service announcements featuring Canadian artists and aired them on Canadian television networks.

In the 1999-2000 Annual Report, reference was made to a multilingual plain language *Complainant's Guide* that was being developed in partnership with the *Council of Agencies Serving South Asians* (CASSA). This brochure was completed during this past year and is available in the following languages: Hindi, Tamil, Punjabi, Gujarati, Urdu and Bengali as well as in English and French.

## NATIONAL AND INTERNATIONAL INITIATIVES

## Ontario Submissions

The Commission provides input from the province's perspective to reports prepared by Canada in accordance with Canada's obligations under international conventions. The Commission highlights relevant legislative, judicial and administrative policies, programs and activities during the given reporting period as they relate to particular articles in the respective conventions. During the past fiscal year, the Commission prepared comments for consideration in two reports:

- Canada's Fifth Report on the Convention on the Elimination of All Forms of Discrimination against Women;
- Canada's Fourth Report under the International Covenant on Social, Economic and Cultural Rights.

## Canadian Association of Statutory Human Rights Agencies (CASHRA)

Staff representing all the human rights commissions in Canada who perform public education functions, meet regularly by teleconference to share information and plan new projects. Working with this network, the Commission led the development of a human rights poster. This poster was launched at CASHRA at its Annual Conference in Banff. The poster features the slogan "Human Rights are Everyone's Business/Les Droits de la personne, c'est l'affaire de tout le monde". The poster is being used by each of the commissions as a public education tool.

## International Delegations and Visitors

The Commission's involvement in international human rights continued to play a part in its work last year. It hosted representatives from human rights commissions and related agencies and groups from the following countries: Republic of Korea, Thailand, Jiangsu Province (China), Malawi, Norway, Uganda and Northern Ireland. In addition, Commission staff addressed two international conferences, one on Public Ethics and another on Law.

## CORPORATE INITIATIVES

The past year's results show that the Commission is now better positioned than ever before to meet the challenges of its mandate: it has a current caseload, an all-time high in public education activities and some recent high profile policy initiatives have received very favourable public reaction. Both its community partners and government have acknowledged and recognized the progress that the Commission has made in its work.

In the Fall of 2000, the Commission engaged in a consultation process with staff and its external stakeholders including key provincial government ministries and agencies about its strategic directions for the 2001-2003 period. This process has clarified expectations and given important insights into the need for the Commission to continue to deliver on an increasingly wide range of human rights issues and activities. Over the next year, the Commission will be moving forward on implementing initiatives that support its established strategic objectives.

## LEGAL SERVICES BRANCH

During the 2000-2001 fiscal year, the Legal Services Branch received the following: 11 Board of Inquiry decisions, 12 judicial review decisions, 9 appeal decisions and six Supreme Court of Canada decisions (five applications for leave to appeal dismissed; one successful intervention).

At the end of the 2000-2001 fiscal year, the ongoing litigation in the Legal Services Branch comprised: 94 Board of Inquiry files, nine judicial reviews, seven appeals and one case at the Supreme Court of Canada.

The following are highlights of some of the significant decisions and cases over the past year.

#### APPEALS

# Blencoe v. British Columbia (Human Rights Commission) Supreme Court of Canada (Intervention) Decision: October 5, 2000

Robin Blencoe, the respondent to several human rights complaints of sexual harassment in 1995, had successfully argued before the British Columbia Court of Appeal that the two-year delay in processing the complaints violated his right to life, liberty and security of the person under section 7 of the Canadian Charter of Rights and Freedoms (Charter), and that a stay of the proceedings against him was an appropriate remedy. The Supreme Court of Canada held that the appropriate remedy for the abuse of process was not a stay but rather an order for an expedited hearing.

Current status: The Supreme Court of Canada set aside the decision of the British Columbia Court of Appeal. The British Columbia Human Rights Tribunal proceeded with the hearing of the complaints on their merits.

## Entrop v. Imperial Oil Ontario Court of Appeal Decision: July 21, 2000

Martin Entrop had been employed by Imperial Oil Limited for 18 years when the company's new "Alcohol and Drug Policy" came into effect. In accordance with the policy, Entrop was required to disclose that, some years before, he had had an alcohol problem. As a consequence of this forced disclosure, Entrop was removed from his safety-sensitive job to a less desirable job. He was later reinstated but found himself subjected to more rigorous management supervision than before his disclosure. He was also required to make frequent declarations as to his sobriety in order to keep his job. Entrop filed a complaint with the Commission alleging that he had been discriminated against on the basis of a handicap and that he had been subject to reprisal.

Result at Board of Inquiry: In a series of separate decisions, the Board made a number of rulings. The key decision was the Board's determination that the drug-testing programs employed by Imperial Oil had the effect of discriminating against persons who were substance abusers on the basis of their handicap or perceived handicap.

**Result at the Court of Appeal**: The Court held that in cases of adverse affect discrimination, the unified approach and the three-step test adopted by the Supreme Court of Canada in *Meiorin* should be applied. The three-step test requires that:

- i) the rule is rationally justified;
- ii) the rule is bona fide; and
- iii) the standard is reasonably necessary to the accommodation of that legitimate work-related standard.

To succeed on the last step, an employer must prove that accommodation is impossible or will cause undue hardship.

The Court also confirmed that substance abuse is a handicap and thus the policy was *prima facie* discriminatory. The drug testing provision violated the *Code* because it could not accurately measure impairment. The Court held further that random alcohol testing would not satisfy the *Meiorin* test unless Imperial Oil took steps to accommodate those who tested positive, including less severe sanctions than dismissal and providing the necessary support to permit treatment. Finally, the Court held that the requirement of disclosure of a past abuse problem was unreasonable.

Current status: The decision was not appealed.

# McKenzie Forest Products Inc. v. Tilberg Ontario Court of Appeal Decision: April 18, 2000

The facts and history of this case were noted extensively in the Ontario Human Rights Commission Annual Report 1999 – 2000, pp 21 & 22.

The Commission referred Adam Tilberg's complaint to the Board of Inquiry but withdrew from the proceedings after mediation that resolved the public interest issues between McKenzie Forest Products and the Commission. However, Tilberg wanted his complaint to be heard by the Board of Inquiry. McKenzie sought to have the complaint dismissed. The company argued that since the Commission had withdrawn, the Board was without jurisdiction to proceed.

Result in Court of Appeal: The Court held that an individual could continue with a hearing of a complaint, even though the Commission was no longer taking part.

Current status: The Divisional Court decision was set aside and the matter was remitted back to the Board for further hearing. An application for leave to appeal to the Supreme Court of Canada was dismissed November 9, 2000.

# OHRC v. Mr. A, et al. Ontario Court of Appeal Decision: November 14, 2000

Complainant A was an employee of D Ltd. B was vice-president and manager of D Ltd. He was A's direct supervisor, and also A's wife's brother (i.e. A's brother-in-law). D Ltd. was owned by C, who was also a brother of A's wife.

A worked for D Ltd. for 26 years without incident. Just prior to the termination of his employment, his daughter told him and his wife that she had recently uncovered a memory in therapy that B had sexually abused her when she was a child. A's wife and daughter went to confront B (A's wife's brother) at his home. While A had driven his wife and daughter to B's house on that evening, he was not involved in the confrontation. On Monday, A went to work as usual, where B terminated A's employment.

Result at Board of Inquiry: The Board of Inquiry found as a fact that A was able to keep his personal and employment situations separate from each other. The Board then concluded that, in the absence of any other explanation, A was fired because of the actions of his wife and the accusations of his daughter, and that the facts amounted to discrimination based on marital or family status.

Result at Divisional Court: The Divisional Court upheld these factual findings but said that, even though the parties were related through marriage, this case does not amount to discrimination on the basis of family or marital status.

Result on Appeal: The Court of Appeal allowed the Commission's appeal, agreeing that the grounds "family status" and "marital status" must include the particular identity of one's parent, child or spouse.

Current status: The respondents are seeking leave to appeal to the Supreme Court of Canada. Both sides have filed materials, and the parties are now awaiting the Court's decision.

#### DIVISIONAL COURT

## OHRC v. Shelter Corp., Divisional Court Decision: February 1, 2001

This case dealt with the legitimacy of the landlords' use of rent-to-income ratios in assessing applications, a practice widely used. Landlords require tenant applicants to disclose their income and based on this information, decide whether or not to accept the applicants as tenants.

A longer description of the case is found in the 1998-99 Annual Report, pp. 18-19, Dawn Kearney, JL and Catarina Luis vs. Bramalea et al.

Result at Board of Inquiry: The Board of Inquiry found that the landlords' use of the rent-to-income ratios to screen tenants constituted *prima facie* constructive discrimination against the complainants.

The Board found that the use of such ratios was neither reasonable nor bona fide. The Board also found that landlords would not experience any undue hardship if they were to stop using the rent-to-income ratio in assessing prospective tenants. The Shelter Corporation and Creccal Investments Ltd. appealed the Board's decision to the Divisional Court.

Result on Appeal: The Court upheld the findings of the Board of Inquiry that the landlords' use of income criteria was a violation of the *Code*. However, the Court amended the Order of the Board to reflect legislative changes. The Court also held that "there is no ceiling on the amount of general damages".

Current status: Both the complainants and the respondent landlords are seeking leave to appeal on different grounds. The two motions will be heard together.

## BOARD OF INQUIRY HEARINGS

# Metsala v. Falconbridge Ltd; Kidd Creek Division, BI-0210-99 Board of Inquiry Decision: February 15, 2001

Dawn Metsala began working as a clerk with Falconbridge Ltd. in 1972. In 1988, she was promoted to payroll clerk. In early December of 1989, Metsala

asked for a transfer because of the workplace stress and was told she would have to wait for a position to become vacant. On December 11,1989, Metsala commenced sick leave and was subsequently diagnosed with reactive depression and chronic fatigue. Metsala's long-term disability benefits were cut off on June 30, 1992.

On June 26, 1992, Metsala's doctor completed a certificate of fitness indicating that while Metsala was not fit for her regular job, she was capable of handling a half-day of non-intense office work. From June of 1992 to the end of December in 1993, five clerical positions were filled on a contract basis. The supervisor did not consider these positions appropriate for Metsala and also did not contact her or her doctor in making these determinations.

Result at Board of Inquiry: The Board found that Metsala was treated unequally vis-à-vis other employees when she was not provided with contract work or general clerical duties from June 1992 to the end of December 1993, and then she was required to compete for the position which she ultimately received. This unequal treatment constituted a *prima facie* case of direct discrimination on the basis of handicap.

Falconbridge did not try to discover the true nature of Metsala's medical condition. It did not offer her contract positions because the company held assumptions and stereotypes based on her previous illnesses. In fact, Falconbridge had no objective basis for concluding that she was incapable of fulfilling the work duties. Accordingly, the Board held that Falconbridge could not rely on the defence in the *Code*. Additionally, the company provided no evidence to the Board that supported its contention that it would suffer undue hardship if it accommodated Metsala. Accommodation to an employee requires more than merely investigating whether an employee could perform an existing job.

Current status: The decision of the Board of Inquiry was not appealed and the Commission is taking steps to ensure compliance with the Board order.

## Anderson and O'Neill v. The YMCA of Barrie Board of Inquiry Decision: December 6, 2000

The complainants, Ellen Anderson and Lucia O'Neill, complained that while women could become regular members of the Barrie YMCA, they could not buy premium memberships, which were available only to men. The men who belong to the premium membership category are entitled to use a separate facili-

ty with many amenities not available to regular members. There was no comparable facility with similar amenities available to women.

Result at Board of Inquiry: The Board of Inquiry found that the facilities that exist at the Barrie YMCA constitute an infringement of the complainants' rights to be free from discrimination on the basis of sex in the provision of services. The Board order requires that the Barrie YMCA build a women's facility, comparable in size and amenities to its men's premium membership facilities by September 1, 2001.

Current status: The Commission is currently taking steps to ensure compliance with the Board order.

# Jeppesen v. Corporation of the Town of Ancaster et al., Board of Inquiry Decision: January 2, 2001

The complainant, Mark Jeppesen, was employed with the Ancaster Fire and Emergency Services as a part-time fire fighter in January of 1988. In 1995, Jeppesen was diagnosed with histoplasmosis, an airborne fungal disease that resulted in the loss of central vision in his left eye. In 1997, the Ancaster Fire Department twice advertised for full-time firefighter positions. One of the job requirements of the position was the ability to drive an ambulance, which requires a Class F license.

Due to his vision impairment, Jeppesen was unable to obtain the required license and asked to be accommodated by performing only fire fighting duties. The Ancaster Fire Department refused Jeppesen's request for accommodation, and denied him a job because of his inability to obtain a Class F license.

Result at Board of Inquiry: The Board held that Jeppesen had a handicap under the Code. The Board held further that requiring all full-time firefighters to obtain a Class F license, to be able to drive an ambulance, constituted prima facie discrimination because it excludes persons with visual disabilities from becoming full-time firefighters. The Board held further that Jeppesen could have been accommodated, short of undue hardship to the Fire Department, by permitting him to perform firefighting and related duties only.

Current status: The parties settled on the question of remedy prior to the Board hearing on this issue. The decision on liability will not be appealed.

# MEDIATION AND INVESTIGATION BRANCH

## INQUIRY AND INTAKE SERVICES

The Inquiry and Intake Service Unit is the first point of contact for members of the public who need information on filing a human rights complaint. Callers receive basic information on the Commission, how to file a complaint and other information about the human rights process.

During this fiscal year 2000 - 2001, Inquiry and Intake Services received a total of 163,765 telephone calls. Staff responded to 52,848 calls or 81% of the 65,207 callers who opted to speak to an Inquiry Service Representative. On average, calls were responded to within 3.4 minutes. Staff sent out 4,133 intake questionnaires and 2,351 completed intake packages were returned. In this fiscal year, 1,775 formal complaints were filed.

## MEDIATION AND INVESTIGATION SERVICES

Of the 1,941 complaints closed this year, 1,219 complaints were mediated, settled, resolved by parties or withdrawn and the Commission made decisions on 722 of these complaints.

The growing use of mediation, by people on each side of a complaint, is the principal reason the Commission has significantly reduced its caseload. Specially-trained mediators offer parties the option of voluntary mediation early in the process. The mediation process is generally concluded within three to six months of filing a complaint. This year, 51% of the Commission cases were resolved as a result of mediation services, as well as more traditional settlement techniques such as conciliation.

The Commission also met its public performance measures for mediation set out in the Ministry's 2000-2001 business plan. Last year, it committed to achieve a 65% settlement rate at the mediation stage. This year, it surpassed that goal with a rate of 73.2%.

The success of the voluntary mediation program has reduced the number of complaints that proceed to the investigation stage. Over the past several years,

the inventory of cases being investigated has been steadily dropping from 1,780 at March 31, 1998 to 631 as at March 31, 2001. This has also enabled the Commission to focus its investigative resources on older cases, particularly those that have been active files for more than 12 months.

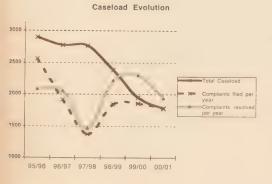
Last year, the Commission committed to resolve 80% of cases that were more than a year old by April 1, 2001. At the end of this fiscal year, on March 31, 2001, the Commission had resolved 572 of the 620 cases. This represents 92% of the target. By reducing the number of older cases in investigation, the average age of the caseload has been reduced to 10.4 months.

## THE CASELOAD

During the 2000-2001 fiscal year, the Commission made significant strides in a number of areas including caseload management, timeliness in handling complaints and public education.

Once again this year, the Commission has resolved more cases than it opened. In 2000-2001, it opened 1,775 and resolved 1,941 cases. As at March 31, 2001, the Commission's active caseload was 1,781. A comparison with earlier figures of 2,745 on March 31, 1998, 2,386 on March 31, 1999 and 1,952 on March 31, 2000, demonstrates the consistent progress the Commission continues to make in this area.

The Commission also referred 73 complaints to the Board of Inquiry (Human Rights).





## ACCOUNTABILITY FRAMEWORK

The Commission has presented its accountability framework in the last three annual reports. The framework establishes targets for the organization's performance in the coming year and reports on achievements against previously established targets.

The following is a summary of achievements against targets in the 2000-2001 fiscal year.

| SERVICE AREA                                  | 2000-2001 COMMITMENTS   | 2000-2001 ACHIEVEMENTS<br>(As at March 31, 2001 unless<br>otherwise indicated)   |
|---|---|--|
| Promotion and<br>Awareness of<br>Human Rights | Conduct one new public awareness campaign.                                | A new province-wide campaign was launched on human rights and breastfeeding, in partnership with Infant Feeding Action Coalition (INFACT) Canada and Toronto Public Health. The campaign was in several major urban centres on public transit vehicles.  |
|   | Implement Aboriginal Initiative.  | The Ontario Federation of Indian Friendship Centres and Grand River Employment & Training completed Phase 1 of the Aboriginal Human Rights Initiative, which is designed to create and sustain an awareness of human rights in off-reserve Aboriginal communities and to enhance equality for Aboriginal persons in Ontario. |
|   | Ensure international obligations are integrated into all new policy work. | International human rights standards integrated into new policy work on age, disability and pregnancy.  Commented on Canada's reports under various international instruments.   |
|   | Launch policy initiative for CASHRA 2001                                  | The human rights commissions of Ontario and Quebec co-launched the new policy and research group of the Canadian Association of Statutory Human Rights Agencies (CASHRA) and co-chaired the sub-committee on resolutions with respect to social and economic rights and social condition.                                    |

| SERVICE AREA | 2000-2001 COMMITMENTS  | 2000-2001 ACHIEVEMENTS<br>(As at March 31, 2001 unless<br>otherwise indicated)   |
|--------------|--|--|
|              | Enhance accessibility of publications through new series of 'one-pager' information sheets on all major areas of the <i>Code</i> | Completed and posted on the Commission's Web site on March 22, 2001.   |
|              | Achieve a satisfaction rate of 80% among participants for all public education activities.                                       | 86% satisfaction rates reported on a 5-point scale for 3 factors: quality of presenter or presentation, effectiveness of materials and usefulness of presentation.                             |
|              | Launch new Web site that improves access, is easier to use and more client-focused.  | New Web site launched on March 22, 2001.   |
| POLICY       | Release paper on Age Discrimination.   | On May 31, 2000, the Commission released its Discussion Paper entitled Discrimination and Age: Human Rights Issues Facing Older Persons in Ontario.  |
|              | Conduct consultations and develop public policy document on Age Discrimination.  | The Commission's Consultation Paper setting out policy directions was publicly released in September 2000 and consultations were held across the province in the Fall and Winter of 2000-2001. |
|              | Release Policy on Discrimination and<br>Harassment because of Gender Identity  | Released June 21, 2000. Available on Web site and in print and alternative formats.  |
|              | Release consultation report on human rights issues in Insurance.   | Consultation Report approved by Commission in June 2000.   |
|              | Revise Guidelines for Assessing<br>Accommodation Requirements for<br>Persons with Disabilities.                                  | New Policy and Guidelines on Disability and the Duty to Accommodate released on March 22, 2001.  |
|              | Release report on survey of accessibility to transit vehicles.   | Discussion Paper on Accessible Transit<br>Services in Ontario released on<br>February 19, 2001.  |

| SERVICE AREA          | 2000-2001 COMMITMENTS   | 2000-2001 ACHIEVEMENTS<br>(As at March 31, 2001 unless<br>otherwise indicated)  |
|-----------------------|---|---|
|                       | Conduct second policy dialogue  | Policy discussion on "Human Rights and Human Development" held in partnership with Community Development Network on March 21, 2001.   |
|                       |   | Other significant policy achievements:  |
|                       |   | During the fiscal year, the Commission also released the updated Policy on Drug and Alcohol Testing to reflect the recent Ontario Court of Appeal decision in Entrop v. Imperial Oil and its Policy on Female Genital Mutilation to reflect amendments to child protection legislation and the Criminal Code. Commission staff also prepared and released a research paper entitled: Human Rights Commissions and Economic and Social Rights (February 2001). |
|                       |   | Policy staff also undertook corporate responsibility for training on new policy work and for initiating a survey of accessibility in the Commission (See Corporate Initiatives).  |
| INQUIRY<br>SERVICES   | Average response time on calls handled by inquiry service representatives will be within 2 minutes. | Average response time was 3.4 minutes   |
| INTAKE<br>SERVICES    | Draft complaints within 15-20 days.   | Average time to draft a complaint was 28.6 days. Efforts to improve these times have resulted in the average time being decreased to 9.4 days in the fourth quarter of the fiscal year.   |
| MEDIATION<br>SERVICES | Achieve at least a 65% settlement rate in cases in which mediation has been attempted.              | Settlement rate of 73% in cases in which mediation was attempted. This is comparable to last year's rate of 74%.  |

| SERVICE AREA           | 2000-2001 COMMITMENTS  | 2000-2001 ACHIEVEMENTS<br>(As at March 31, 2001 unless<br>otherwise indicated)   |
|------------------------|--|--|
|                        | Resolve a minimum of 1,300 cases through mediation services.   | 1,246 cases were resolved through mediation services.  |
| INVESTIGATION SERVICES | Resolve 80% of cases over 2 years of age as at April 1, 2000.  | 572 of the 620 cases were resolved, or 92% of the target.  |
|                        | Resolve a minimum of 850 cases through investigation services.   | 696 cases were resolved through investigation services, or 81% of the target.  |
|                        | Reduce the median age of the caseload to below 9 months.   | Median age of the caseload as at March 31, 2001 was 7 months.  |
|                        | Decrease the average age of the case-load to 12 months.  | Average age of the caseload on March 31 <sup>st</sup> , 2001 was 10.4 months.  |
| CORPORATE INITIATIVES  | Implement Quality Service Standards.   | Quality Service Standards have been developed for each Branch.   |
|                        | Develop training program on Public Education Techniques.   | In light of the significance of the disability initiatives introduced this year, resources were reallocated to conduct a 2.5 day corporate training program on disability rights and the operational implications of the new <i>Policy and Guidelines on Disability and the Duty to Accommodate.</i> |
|                        | Initiate Accessibility Review of<br>Commission services and employment<br>practices for persons with disabilities. | Internal survey of accessibility in services of Commission was conducted. List of accessible services/measures will be posted on the Web. The Commission has upgraded its TTY capacity and launched a more accessible Web site.  |

The following are the Commission's public commitments for the 2001-2002 fiscal year.

| SERVICE AREA                               | 2001-2002 COMMITMENTS   |
|--|---|
| Promotion and Awareness Of                 | Conduct one new public awareness campaign.  |
| Human Rights                               | Implement Phase 2 of the Aboriginal initiative.   |
|  | Achieve a satisfaction rate of 80% among participants for all public education activities.  |
| Policy                                     | Release Consultation Report on Age Discrimination.  |
|  | Develop workplace guides on disability issues in plain language in consultation with employers and employees and a separate plain language guide to inform people of their rights and responsibilities. |
|  | Initiate consultations on disability in the education sector.   |
|  | Develop consultation report on transit accessibility.   |
|  | Ensure international obligations are integrated into all new policy work.   |
| Inquiry and Intake<br>Services             | Average response time on calls handled by inquiry service representatives will be within 2.5 minutes.  Draft complaints within 15-20 days.  |
| Mediation and<br>Investigation<br>Services | Achieve at least a 65% settlement rate in cases in which mediation has been attempted.  |
|  | Once parties have agreed to mediation, the mediation will be completed within 3 to 6 months.  |
|  | The average time required to resolve a complaint, from filing to closing, will be reduced from 15.4 months to under 14 months.  |
| Corporate<br>Initiatives                   | Begin implementation of corporate Strategic Plan 2001-2003.   |

#### LIST OF COMMISSIONERS



KEITH C. NORTON, Q.C., B.A., LL.B.

Chief Commissioner

Keith Norton was appointed Chief Commissioner of the Ontario Human Rights Commission on July 18, 1996. He is an educator and a lawyer by training, having studied law at Queen's University in Kingston, as well as having received a diploma in education from the Ontario College of Education. He practiced criminal and family law in Kingston, Ontario, and taught at the secondary and post-secondary levels.

Mr. Norton is a former Minister of Community and Social Services and served as Parliamentary Assistant to the Treasurer of Ontario and Minister of Economics and Intergovernmental Affairs. He has also served as Minister of Health. Minister of Education and Minister of Colleges and Universities.

As Minister of the Environment between 1981 and 1983, Mr. Norton became the first Canadian cabinet minister to testify before a Committee of the United States Senate. Throughout his career, Mr. Norton has championed issues related to persons with disabilities, senior citizens and the disadvantaged. He has also been involved in a number of business ventures.

Mr. Norton is a former President of the Canadian Human Rights Tribunal.



#### CHERYL BLONDELL

Cheryl Blondell was appointed to the Commission in February 1997. She is an Assistant Crown Attorney in the Ministry of the Attorney General. She formerly served as Criminal Duty Counsel with the Ontario Legal Aid Plan, where she advised and represented accused persons. Ms. Blondell worked for the Commission in the summer of 1989 as part of the team that created the Systemic Investigations Unit.



## The Revd Fr. WILLIAM G. CLIFF

Fr. Cliff was appointed to the Commission in February 1997. He is the Rector of St. John the Evangelist Church in Strathroy in the Diocese of Huron. He is a former member of the University of Western Ontario Senate, a Padre with the Royal Canadian Legion and a member of the Anglican Roman Relations Committee of the Diocese of Huron. A former Chaplain Intern at St. Joseph's Health Centre, London, he was trained at King's College and Huron College at the University of Western Ontario and has served congregations in London,

Simcoe, Hanover and Durham, Ontario.



### RICHARD MILES

Before his appointment to the Commission in July 1992, Richard Miles held senior administrative positions with the Ministry of Community and Social Services, the Federal Secretariat for Disabled Persons Office, and the Handicapped Action Group Incorporated in Thunder Bay. Mr. Miles was appointed by the Minister of Citizenship, Culture & Recreation to the task force, which conducted a procedural review of the Ontario Human Rights Commission.



### MARNIE PAIKIN, CM

Marnie Paikin was appointed to the Commission in September 1996. She is a past President of the Canadian Council of Christians and Jews, and a recipient of the Province of Ontario's "Outstanding Woman Award" and of the Human Relations Award of the Canadian Council of Christians and Jews. She has been inducted into the Hamilton Gallery of Distinction and has been appointed a Member of the Order of Canada. Ms. Paikin is currently a Director of Atomic Energy of Canada Ltd. and of Westcoast Energy Inc.



#### PETER LI

Peter Li is the General Manager of Sing Tao Daily News, Eastern Edition. Mr. Li was appointed to the Commission in September 1997. He is a member of the Chinese Canadian Development Committee of the Hospital for Sick Children Foundation and sits on the Asian Business Committee of Metro Toronto and York Region's Junior Achievement. Mr. Li was a member of Canada Trust's Asian Advisory Council. He has also served as a Director of the Chinese Information and Community Services and was a past Vice-President of the Chinese Canadian

Advertising, Media and Marketing Association. Mr. Li is a former General Manager of Hotel Victoria and Project Administrator of the Chinatown Centre.



#### NALIN KANUCK

Nalin Kanuck was appointed to the Commission in September 1997. He is a Management and Financial Consultant. He is also an advisor on Race Relations to the York Region Board of Education. Mr. Kanuck is a former Justice of the Peace in Sri Lanka, a position that required him, among other judicial functions, to investigate human rights violations. He was also Chairman and Managing Director of the Regional Development Board in the Ministry of Regional Development in Sri Lanka. He also functioned as a Director of the National

Youth Service Council in Sri Lanka's Prime Minister's Office. Mr. Kanuck has a Bachelor of Arts Degree from the University of Ceylon and an Executive Diploma in Public Administration from the

University of Colombo, Sri Lanka. The City University of California also awarded him an Honourary Doctorate Degree in Public Administration. He is a graduate of the Canadian Institute of Certified Administrative Managers and a Fellow of the British Institute of Management, England.



### MICHEL LALONDE

Michel Lalonde is Reeve of the East Hawkesbury municipal council, having served over the last 20 years as Councillor and as Deputy Reeve. He was appointed to the Commission in December 1997. In 1993, Mr. Lalonde served as Warden of the Council for the United Counties of Prescott and Russell. He was subsequently elected to the Council's executive, planning and public works committees. He received the Award of Merit for the County of Prescott for the year 1985 and also served as President of the Prescott Mutual

Insurance Board and of the Hawkesbury and District General Hospital Board. A farmer by occupation, Mr. Lalonde is an active participant in the local farming community. He served from 1989 to 1996 on the board of directors of the Glengarry, Prescott and Russell Local Agricultural Employment Board and as President of the Prescott Peer Review Committee for Environmental Farm Plan from 1993 to 1997.



#### **CLAUDETTE ROBINSON**

Claudette Robinson was appointed to the Commission in March 1998. She studied at the University of Ottawa and McMaster University. Ms. Robinson is the French Coordinator at Sheridan College and a language consultant for corporate clients. She has co-authored a series of French readers for elementary and secondary schools. She was the author and co-author of three national French television series for TVO educational programs one of which she hosted. She has been consultant for the Halton Board of Education, has

taught at the University of Ottawa summer school and has been Principal of the Teaching French as a Second Language course for the Ministry of Education.



#### ABDUL HAI PATEL

Abdul Hai Patel was appointed to the Commission in April 1999. Mr. Patel received his primary education in India, secondary education in Barbados and post-secondary education at York University. He is currently employed with Ontario Hydro as a Systems Technical Specialist.

Mr. Patel is a recipient of the Canada 125 commemorative medal from the Governor General for Community Service. He is a recipient of the Volunteer Service Award from the Ministry of Citizenship, Culture and

Recreation, a member of the South & West Asian consultative committee of the Toronto Police, and a coordinator of the Islamic Coordinating Council of Imams-Canada. Mr. Patel is also the Vice-Chair of the Association of Employees for Employment Equity in Ontario Hydro and serves

as a member of the Provincial Committee of Power Workers Union on Employment Equity and Diversity.



#### CHRISTIANE RABIER

Christiane Rabier was appointed to the Commission in April 1999. Ms. Rabier received her PhD from the University of Nice-Sophia-Antipolis; she received her Masters from the University of Montreal and studied public law at the University of Montpellier in France. She is currently Chair of the Department of Political Science and Vice-Dean of Social Sciences and Humanities at Laurentian University in Sudbury.

Ms. Rabier is active within the francophone community in Sudbury and has worked on a program for francophone women to attend post secondary studies, as well as served as a consultant with TV Ontario on Continuing Education. She also served as a volunteer with Canada's Special Olympics in 1998 and Operation Red Nose in 1999.



## JUDITH-ANN MANNING

Judith Ann-Manning was appointed to the Commission in February 2000. Ms. Manning is an Accessible Services Planner/Barrier-Free Consultant. She majored in Criminology and Law at the University of Toronto. She currently is the Co-ordinator of the University of Toronto's Wheelchair Access Committee and has held the position of Chair of the North York Advisory Committee For Persons With Disabilities, co-Chair of the Board of Directors of the Centre for Equality Rights in Accommodation, and vice-Chair of the

Toronto Transit Commission's Advisory Committee on Accessible Transportation. Ms. Manning also volunteers at the Sunnybrook Health Science Centre in the annual Run for Research.

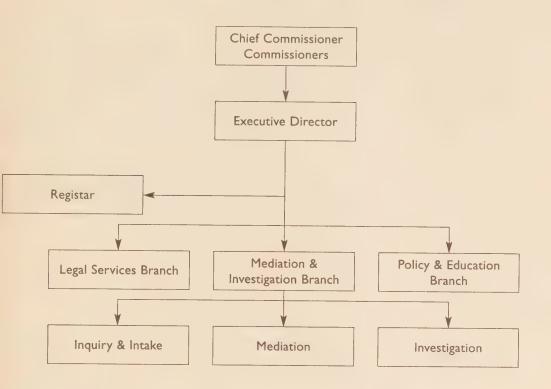


#### MAE RADFORD

Mae Radford was appointed to the Commission in April 1999. Ms. Radford received a diploma in nursing from the Toronto Western Hospital and a Bachelor of Arts in health administration from York University. She is currently the manager of volunteer services, overseeing operations of a team of 1700 volunteers who deliver friendly visiting, palliative care volunteer visiting, transportation, and Meals on Wheels for the VON Hamilton-Wentworth.

Ms. Radford is a member of the Coalition of Community Health and Support Services, which advocates for community-based health care. She is a member of the Ontario Community Support Association and the Chair of District B. Ms. Radford is the vice-chair of the Citizen Committee for Violence Against Women for the City of Burlington.

#### ORGANIZATIONAL CHART



### BRANCH DESCRIPTIONS

## Office of the Chief Commissioner

The Office of the Chief Commissioner provides leadership and guides the Commission in carrying out its statutory functions in a way that ensures that, at both the government and community levels, human rights are protected in the province. The Chief Commissioner and Commissioners set policy direction and make decisions about complaints relating to the *Code*.

## Office of the Executive Director

The Office of the Executive Director provides leadership and direction to senior management staff of the Commission in carrying out its statutory mandate; directs the development and implementation of corporate and operational plans; and leads the planning and implementation of ongoing organizational improvement initiatives within the Commission. The Registrar's Office, attached to the Office of the Executive Director, is responsible for processing Reconsideration requests, co-ordinating all functions related to Commission and Panel Meetings, and Freedom of Information and Ombudsman issues.

## Mediation and Investigation Branch

The Mediation and Investigation Branch handles all the enforcement functions of the Ontario Human Rights Commission.

The public's first contact with the Commission is through the centralized Inquiry and Intake Unit. This office handles all inquiries and drafts complaints from across the province. The Mediation Office provides mediation services as well as processing Section 34 requests which gives the Commission discretion not to deal with a complaint, if it could have been resolved elsewhere, is filed in bad faith, is out of time or is outside the Commission's legal authority. The Investigation Office undertakes investigation and conciliation of complaints.

The Branch also develops multi-year strategies to effectively manage the Commission's caseload and procedures for the mediation and investigation of complaints. In addition, the Branch assists in carrying out the Commission's public education mandate.

## Policy and Education Branch

The Policy and Education Branch provides leadership and direction for the promotion and advancement of human rights and supports the enforcement of the *Code*.

The Branch ensures the promotion of human rights through compliance with the Code and with international human rights obligations. This includes the development of public policy statements, formal guidelines and research on a broad range of human rights and social justice issues. The Branch is responsible for national and interantional liaison, issues management, media and stakeholder relations, the Web site and publications. It also conducts public consultations and focus groups and represents the Commission on intergovernmental task forces and delegations.

The Branch is responsible for the strategic planning function for public education and communications at a corporate level and for implementing a wide range of educational programs and partnership initiatives, such as public awareness campaigns, presentations, workshops and conferences. The Branch also provides communications and policy support to the Offices of the Chief Commissioner and the Executive Director.

## Legal Services Branch

The Legal Services Branch assists the Commission in fulfilling all aspects of its mandate, including compliance, public education and litigation. Its activities include providing legal advice to senior management, Mediation and Investigation managers and officers concerning investigation and conciliation of cases, providing legal opinions requested by the Commission, and serving as legal counsel to the Commission before the Board of Inquiry and the courts (on matters of judicial review and appeals).

Publications Web

## LIST OF PUBLICATIONS

|  | Publications<br>Ontario                | Web<br>Site |
|--|--|-------------|
| Plain Language Documents   |  |             |
| Female Genital Mutilation: Questions and Answers   |  |             |
| .(available in English/French, Arabic/Somali, Swahili/Amharic) (8/99)                    |  | 1           |
| Guide to the Human Rights Code (5/99)  | 1                                      | 1           |
| Guide to Mediation Services (5/97)   |  | 1           |
| Hiring? A Human Rights Guide (3/99)  | 1                                      | 1           |
| Human Rights at Work (9/99)  | 1                                      | 1           |
| Human Rights in Ontario (available in English/French;                                    |  |             |
| Bengali/Urdu; Hindi/Punjabi; Gujarati/Tamil) (7/00)                                      | 1                                      |             |
| If You Have a Human Rights Complaint - A Complainant's Guide (5/97)                      |  | /           |
| If You Receive a Human Rights Complaint – A Respondent's Guide (9/99                     |  | 1           |
| Pregnancy – Before, During and After: Know Your Rights (5/99)                            | <i>-</i>                               | 1           |
| Protecting Religious Rights (1/00)   | 1                                      | 1           |
| Racial Slurs and Harassment and Racial Jokes (6/96)                                      |  | 1           |
| Sexual Harassment and Other Comments or Actions About a                                  |  |             |
| Person's Sex (11/96)   |  | ✓           |
| Policies and Guidelines  |  |             |
| Guidelines on Special Programs (11/97)   |  | ✓           |
| Human Rights Policy in Ontario (All policies published before 1999) (12/                 | <b>/</b> 99) <b>/</b>                  |             |
| Policy and Guidelines on Disability and the Duty to Accommodate (11/0                    | 0)                                     | 1           |
| Policy on Creed and The Accommodation of Religious Observances (10/9                     | 6)                                     | 1           |
| Policy on Discrimination and Harassment Because of Gender Identity (3/                   | 00)                                    | 1           |
| Policy on Discrimination and Harassment Because of Sexual Orientation (                  | (1/00)                                 | 1           |
| Policy on Discrimination and Language (6/96)   |  | 1           |
| Policy on Discrimination Because of Pregnancy (5/99)                                     |  | 1           |
| Policy on Drug and Alcohol Testing (9/00)  |  | 1           |
| Policy on Employment-Related Medical Information (6/96)                                  |  | /           |
| Policy on Female Genital Mutilation (FGM) (11/00)  |  | 1           |
| Policy on Height and Weight Requirements (6/96)  |  | 1           |
| Policy on HIV/AIDS Related Discrimination (11/96)  |  | 1           |
| Policy on Racial Slurs & Harassment & Racial Jokes (6/96)                                |  | 1           |
| Policy on Requiring a Driver's Licence as a Condition of Employment (5/9                 | 96)                                    | 1           |
| Policy on Scholarships and Awards (7/97)   |  | 1           |
| Policy on Sexual Harassment & Inappropriate Gender-Related                               |  | ,           |
| Comment and Conduct (9/96)   |  | 4           |
| Other Publications Annual Report   | <b>√</b>                               | <i>y</i>    |
| Developing Procedures to Resolve Human Rights Complaints Within your Organization (6/96) |  | 1           |
| Human Rights Code  | 1                                      | 1           |
|  | ntact the Commiss                      | sion        |
|  | ntact the Commiss<br>ntact the Commiss |             |
| control services ratherpaint satisfaction report (7/77)                                  | ince inc Commiss                       | 11011       |

## LIST OF PUBLIC EDUCATION ACTIVITIES (2000 - 2001)

## **Business/Legal**

Auctioneers' Association of Ontario

Canadian Bar Association of Ontario

Canadian Tire

Corporate Equal Opportunity Group (Conference)

Diversity Update 2001 (Conference)

Fasken Martineau DuMoulin LLP

Federation of Canadian Electrolysis
Associations – Ontario Chapter

Human Resources Professionals Association of Ontario (HRPAO)

HRPAO - Halton Chapter

HRPAO - Kingston Chapter

HRPAO Chapter Presidents

Lancaster Publishing (Conference)

McDonald's Restaurants of Canada

North Bay & District Chamber of Commerce

Ontario Federation of Labour

PolyFab

Renters News/Auto Trader

Shibley Righton LLP

Versa Care Centre (Hamilton)

Wellsizing Conference

## Community

Ajax Multicultural Festival

Association française des municipalités de l'Ontario

Canadian Lesbian & Gay Archives

Community Development Network

Co-ordinators' Association of Southwestern Ontario

Council on American-Islamic Relations

INFACT Canada

JobsMARKET for Persons with Disabilities

Mississauga Rotary Club

Ontario Association for Community Living

Parents partenaires en éducation

**PRIDE 2000** 

Tamil Anti-Racism Committee

Toronto Employment Equity Practitioners'
Association

TGStation Toronto Arts Council

United Way of Greater Toronto

Volunteer Centre of Toronto

**Xpressions** 

#### Education

Association des enseignantes et des enseignants franco-ontariens

Association franco-ontarienne des conseils scolaires catholiques

Cité collégiale

City of Vaughan Youth Advisory Council

Community Health Forum – Humber College

Conseil des écoles catholiques de langue française du Centre-Est

Don Bosco Catholic Secondary School

George Brown College - St. James Campus

Georgian College, Business Administration Program

Kenton Adult Learning Centre

LINC-Ellesmere Toronto District School Board

Loyalist College Monsignor John Pereyma Catholic Secondary School

Ontario Institute for Studies in Education (OISE)

Ontario Business Educators Association

Peel District School Board – Custodial Services

Public Administration Program: Humber College

R.S. McLaughlin Collegiate

Seneca College – Legal & Public Administration

Sheridan College – Architectural Program St. Matthew Catholic School (Markham)

University of Toronto - Faculty of Law

University of Ottawa - Faculty of Law

University of Toronto Law Teacher's Qualifying Course

Woburn Collegiate Institute (Toronto)

York Centre for Feminist Research

York Region District School Board – Principals' Conference

York University Faculty of Education

#### International

Center for Research-Action on Race Relations

Delegate from Norway – Heidi Venner Federation of the Disabled People of Jiangsu

Province

International Institute for Public Ethics

Malawi Human Rights Commission

Ugandan Human Rights Commission, Mr. Hudson Anika

Northern Ireland Human Rights Commission

Government of Israel: Rachel Benziman Government of Thailand

The Ombudsman of the Republic of Korea

#### **Public Sector**

Corporation of the Municipality of Clarington

Grey Bruce Health Services

Kingston Psychiatric Hospital

London Health Sciences Centre

Ministry of Finance

North York Community Care Access Centre

Para-Med Home Health Services

Regional Municipality of Halton

St. Joseph's Health Centre

Workplace Safety & Insurance Board

Table 1: New Complaints Filed by Social Area and Grounds Cited Total Number of Complaints Filed: 1,775

| Accommodation                     | 34            | 16            | 3     | 13              | 8                 | 2                  | 8   | 6              | 29            | 70       | 25                |                   |                      | 8        | 4        | 11          | - 1         | 13              | 251               | 135                                 | 8%                           |
|-----------------------------------|---------------|---------------|-------|-----------------|-------------------|--------------------|-----|----------------|---------------|----------|-------------------|-------------------|----------------------|----------|----------|-------------|-------------|-----------------|-------------------|-------------------------------------|------------------------------|
| Contracts                         |               |               |       | I               |                   |                    |     |                |               | 6        |                   |                   |                      |          |          |             |             |                 | 7                 | 7                                   | 0                            |
| Employment                        | 498           | 224           | 48    | 606             | 204               | 33                 | 123 | 26             | 65            | 517      | - 1               | 2                 | 8                    | 217      | 126      | 13          | 4           | 144             | 2859              | 1335                                | 75%                          |
| Services                          | 118           | 62            | 20    | 41              | 5                 | 13                 | 21  | 9              | 7             | 133      |                   |                   | - 1                  | 3        | 37       | - 11        | 3           | 52              | 536               | 268                                 | 15%                          |
| Vocational Associations           | 24            | 12            | - 1   | 10              |                   | 2                  | 7   |                |               | 6        |                   |                   |                      | 3        | 6        | 1           |             | 3               | 75                | 30                                  | 2%                           |
| Total:                            | 674           | 314           | 72    | 671             | 217               | 50                 | 159 | 41             | 101           | 732      | 26                | 2                 | 9                    | 231      | 173      | 36          | 8           | 212             | 3728              | 1775                                | 100%                         |
| Percent of Ground Cited           | 18%           | 8%            | 2%    | 18%             | 6%                | 1%                 | 4%  | 1%             | 3%            | 20%      | 1%                | 0                 | 0                    | 6%       | 5%       | 1%          | 0           | 6%              | 100%              |                                     |                              |
| Percent of Total Complaints Filed | 38%           | 18%           | 4%    | 38%             | 12%               | 2%                 | 9%  | 2%             | 6%            | 41%      | 2%                | 0                 | 0                    | 13%      | 10%      | 2%          | 0           | 12%             | *                 |                                     |                              |
|                                   | Race & Colour | Ethnic Origin | Creed | Sex & Pregnancy | Sexual Harassment | Sexual Orientation | Age | Marital Status | Family Status | Handicap | Public Assistance | Record of Offence | Breach of Smttlement | Reprisal | Ancestry | Association | Citizenship | Place of Origin | Sum of Categories | Total Complaints<br>Per Social Area | Percentage of all complaints |

<sup>\*</sup> Note: Because complaints can involve multiple grounds, the sum by grounds exceeds the total for all complaints filed, and the corresponding percentages of total complaints exceed 100%.

Table 2: Settlements by Ground in Cases Mediated

| Age                    | \$ 72,550.00    | 20                             | \$ 3,627.50  |
|------------------------|-----------------|--------------------------------|--------------|
| Ancestry               | \$ 171,963.00   | 26                             | \$ 6,613.96  |
| Association            | \$ 2,400.00     | 2                              | \$ 1,200.00  |
| Breach of Settlement   | \$ 1,000.00     | 1                              | \$ 1,000.00  |
| Creed                  | \$ 61,545.00    | 10                             | \$ 6,154.50  |
| Ethnic Origin          | \$ 346,800.50   | 45                             | \$ 7,706.68  |
| Family Status          | \$ 114,203.00   | 24                             | \$ 4,758.46  |
| Handicap               | \$ 1,474,381.09 | 143                            | \$ 10,310.36 |
| Marital Status         | \$ 58,450.00    | 10                             | \$ 5,845.00  |
| Place of Origin        | \$ 108,860.50   | 19                             | \$ 5,729.50  |
| Public Assistance      | \$ 6,750.00     | 4                              | \$ 1,687.50  |
| Race & Colour          | \$ 769,803.50   | 101                            | \$ 7,621.82  |
| Reprisal               | \$ 290,019.00   | 52                             | \$ 5,577.29  |
| Sex & Pregnancy        | \$ 825,904.59   | 145                            | \$ 5,695.89  |
| Sexual Harassment      | \$ 38,950.00    | 9                              | \$ 4,327.78  |
| Sexual Orientation     | \$ 16,600.00    | 6                              | \$ 2,766.67  |
| Total for all grounds* | \$ 4,360,180.18 | 617                            | \$ 7,066.74  |
|                        | Monetary        | Number<br>Receiving<br>Damages | Average      |

<sup>\*</sup> Note: Because complaints can involve multiple grounds, the total sum of monetary damages by ground exceeds the sum of monetary damages by complaints (\$1,688,538.63).

Table 3: Complaints Closed by Disposition and Grounds
Total Number of Complaints Closed: 1,941

| Dismissed                    | 20  | 27       | 6           | 3                    | 4           | 12    | 46            | - 11          | 64       | 8              | 37              | 2                 | 116           |                   | 22       | 76              | 5                 | 12                 | 471               | 245                      | 13%                          |
|------------------------------|-----|----------|-------------|----------------------|-------------|-------|---------------|---------------|----------|----------------|-----------------|-------------------|---------------|-------------------|----------|-----------------|-------------------|--------------------|-------------------|--------------------------|------------------------------|
| Failure to provide Evidence  | 1   | 13       | ı           |                      | 3           | 2     | 19            | 5             | 17       | 3              | 7               | 3                 | 35            |                   | 6        | 12              | 1                 | 1                  | 129               | 53                       | 3%                           |
| Not Dealt With (Sec. 34)     | 34  | 35       | 3           |                      | 3           | 9     | 48            | 20            | 172      | 16             | 38              | ı                 | 124           | 2                 | 27       | 71              | 6                 | 3                  | 612               | 351                      | 18%                          |
| Referred to Board of Inquiry | 14  | 6        | 9           | - 1                  | 2           | 2     | 4             | 14            | 26       |                | 6               |                   | 18            |                   | 8        | 28              | 3                 | ]                  | 142               | 73                       | 4%                           |
| Resolved                     | 20  | 13       | 2           | 5                    | 2           | 7     | 36            | 9             | 112      | 6              | 27              | 1                 | 74            |                   | 15       | 92              | 14                | 7                  | 442               | 265                      | 14%                          |
| Settled                      | 51  | 58       | 4           | 3                    | 1           | 25    | 93            | 41            | 288      | 17             | 55              | 8                 | 206           |                   | 71       | 282             | 58                | 20                 | 1,281             | 727                      | 37%                          |
| Withdrawn                    | 22  | 25       |             |                      | 4           | 7     | 39            | 9             | 92       | 5              | 28              | 3                 | 81            |                   | 21       | 82              | 16                | 6                  | 440               | 227                      | 11%                          |
| Total:                       | 162 | 177      | 25          | 12                   | 19          | 64    | 285           | 109           | 771      | 55             | 198             | 18                | 654           | 2                 | 170      | 643             | 103               | 50                 | 3,517             | 1,941                    | 00%                          |
| Percentage                   | 5%  | 5%       | 1%          | 0                    | 0           | 2%    | 8%            | 3%            | 22%      | 2%             | 6%              | 0                 | 19%           | 0                 | 5%       | 18%             | 3%                | 1%                 | 100%              |                          |                              |
|                              | Age | Ancestry | Association | Breach of Settlement | Citizenship | Creed | Ethnic Origin | Family Status | Handicap | Marital Status | Place of Origin | Public Assistance | Race & Colour | Record of Offence | Reprisal | Sex & Pregnancy | Sexual Harassment | Sexual Orientation | Sum of Categories | Total for All Complaints | Percentage of all Complaints |

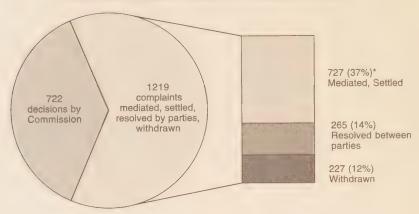
Note: Because complaints can involve multiple grounds, the sum by grounds exceeds the total for all complaints filed.

Table 4: Complaints Closed by Disposition and Social Area
Total Number of Complaints Closed: 1,941

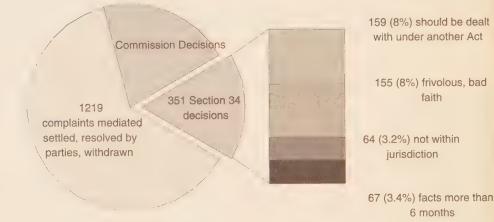
| Dismissed                    | 12            | 4         | 168        | 57       | 4                      | 245               | 245                      | 1.30/                        |
|------------------------------|---------------|-----------|------------|----------|------------------------|-------------------|--------------------------|------------------------------|
|                              | 12            | 1         | 100        | 37       | 4                      | 245               | 245                      | 13%                          |
| Failure to provide Evidence  | П             |           | 40         | 9        |                        | 60                | 53                       | 3%                           |
| Not Dealt With (Section 34)  | 12            | 1         | 222        | 100      | 16                     | 351               | 351                      | 18%                          |
| Referred to Board of Inquiry | 10            |           | 52         | 10       | I                      | 73                | 73                       | 4%                           |
| Resolved                     | 17            |           | 215        | 31       | 2                      | 265               | 265                      | 14%                          |
| Settled                      | 43            | ı         | 615        | 66       | 2                      | 727               | 727                      | 37%                          |
| Withdrawn                    | 19            |           | 183        | 22       | 3                      | 227               | 227                      | 11%                          |
| Total                        | 124           | 6         | 1,495      | 295      | 28                     | 1,948             | 1,941                    | 100%                         |
| Percentage                   | 6%            | 0.5%      | 77%        | 15%      | 1.5%                   | 100%              |                          |                              |
|                              | Accommodation | Contracts | Employment | Services | Vocational Association | Sum of Categories | Total for All Complaints | Percentage of all Complaints |

Note: Because complaints can involve multiple grounds, the sum by grounds exceeds the total for all complaints closed.

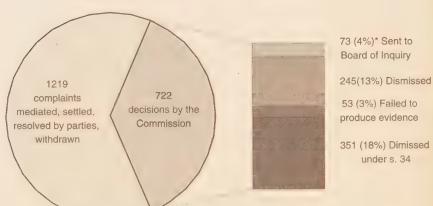
## **Resolved Cases: Details on Settlements**



## **Breakdown of Commission Decisions: Section 34**



## **Breakdown of Commission Decisions**



## BOARD OF INQUIRY DECISIONS AND SETTLEMENTS

## **Decisions**

### Age

Vander Schaaf v. M & R Property Management Ltd. et al.

## Ethnic Origin

Jeppesen v. Corp. of the Town of Ancaster Fire & Emergency Services et al.

## Handicap

Brock v. Tarrant Film Factory Ltd. et al.

Hodge v. District of Halton and Mississauga Ambulance Service

Shepherd v. Deluxe Toronto Ltd., Film House et al.

Moffatt v. Kinark Child & Family Services et al. Jeppesen v. Corp. of the Town of Ancaster Fire & Emergency Services et al.

#### Marital Status

Vander Schaaf v. M & R Property Management Ltd. et al.

## Place of Origin

Duong v. Langstaff Auto Repairs et al.

#### Sex

Curling v. The Torimiro Corp. et al.

Vander Schaaf v. M & R Property Management Ltd. et al.

Anderson & O'Neill v. The YMCA of Barrie

#### Sexual Harassment

Curling v. The Torimiro Corp. et al.

### Sexual Orientation

Moffatt v. Kinark Child & Family Services et al.

#### Sexual Solicitation

Curling v. The Torimiro Corp. et al.

## **Settlements**

#### Age

Martinex v. Amodeo Produce et al.

### Ancestry

Chan v. Ontario Power Generation Inc. et al. Martinex v. Amodeo Produce et al.

#### Colour

Chan v. Ontario Power Generation Inc. et al.

#### Creed

Martinex v. Amodeo Produce et al.

## Ethnic Origin

Chan v. Ontario Power Generation Inc. et al.

Omotayo v. Walsh & Associates Advertising Inc. et al.

## **Family Status**

Chartrand v. Dryden Native Friendship Centre et al.

## Handicap

Tuck v. Baker

Duval v. Spectrum Leather Finishing Ltd. et al.

Farah v. Alladin Juice Bar & Restaurant et al.

Lacz v. Crangle's Garage Ltd. et al.

McCormack v. Upak Disposals (1989) Ltd. et al.

Wicks v. Vuteq Industries et al.

Dooley v. Econome Inc. et al.

#### Race

Chan v. Ontario Power Generation Inc. et al.

Omotayo v. Walsh & Associates Advertising Inc. et al.

### Reprisal

Habkirk v. Filet of Sole Sea Grill Ltd. et al.

#### Sex

Beaudoin v. K.L. Sports Locker et al.

Chan v. Ontario Power Generation Inc. et al.

Larrow v. Ashley's Optical, cob Bargain Optical

Spinks v. The Travel Counter et al.

Goutziouslis v. National Security Technologies Inc. et al.

Gross v. Mipps Systems Solutions Inc. et al.

Kiczula v. Photo Menue Signs Inc. et al.

#### Sexual Harassment

Beaudoin v. K.L. Sports Locker et al.

Larrow v. Ashley's Optical cob Bargain Optical et al.

Spinks v. The Travel Counter et al.

Gross v. Mipps Systems Solutions Inc. et al.

Kiczula v. Photo Menu Signs Ltd. et al.

#### Sexual Orientation

Habkirk v. Filet of Sole Sea Grill Ltd. et al.

#### Sexual Solicitation

Gross v. Mipps Systems Solutions Inc. et al

Goutziouslis v. National Security Technologies Inc. et al.

Kiczula v. Photo Menu Signs Ltd. et al.

## Divisional Court (Judicial Review)

#### Age

Brown & Dargewitcz v. Ministry of Health

#### Creed

Speaker of the Legislative Assembly of Ontario v. OHRC

#### Handicap

OHRC v. Dofasco Inc., Jeffrey et al.

Borland v. OHRC, Oxford County Board of Education.

#### Race

Odia v. OHRC

Payne v. OHRC, Otsuka Pharmaceutical Co. Ltd. et al.

Pieters v. OHRC et al.

Liao v. OHRC, University of Toronto et al.

## Divisional Court (Appeal)

Age, Sex

OHRC, Kearney, J.L., Luis v. The Shelter Corp. et al.

Sexual Harassment, Handicap, Family Status

OHRC v. The Legislative Assembly et al.

Sexual Harassment

Thomas v. OHRC, Midas Canada Inc.

## **Court of Appeal**

#### Handicap

Imperial Oil Ltd. v. OHRC, Entrop et al.

McKenzie Forest Products Inc. v. OHRC, Tilberg et al.

Family Status, Marital Status

OHRC v. Mr. A and Mr. B, Mr. C & D. Ltd.

Race

Payne v. OHRC

Sexual Harassment

Thomas v. OHRC, Midas Canada Inc.

## Leave to Appeal to CA dismissed:

Race

Lee v. OHRC, Toronto Hydro

Supreme Court of Canada

Sexual Harassment

BCHRC et al. v. Blencoe, OHRC et al.

## Leave to Appeal to SCC dismissed:

Creed

Jazairi v. OHRC, York University et al.

Handicap

McKenzie Forest Products Inc. v. Tilberg, OHRC et al.

Race

Liao v. OHRC, University of Toronto et al.

Payne v. OHRC, Otsuka Pharmaceutical Co. Ltd. et al.

Robertson v. OHRC, Maple Leaf Foods Inc.

## ONTARIO HUMAN RIGHTS COMMISSION 2000-2001 ACTUAL YEAR-END FINANCIAL POSITION (\$'000)

|  | 2000-01<br>Printed<br>Estimates | Year-End<br>Budget<br>Adjustments | Revised<br>Budget<br>Mar. 31, 2001 | Actual<br>Expenditure<br>Mar. 31, 2001 | \$        | 2000-2001<br>Year-End Variance<br>% of Revised<br>Budget(11,650.3) |
|--|---------------------------------|-----------------------------------|------------------------------------|--|-----------|--|
| SALARIES & WAGES                       | 7,649.9                         | 320.4                             | 7,970.3                            | 6,740.5                                | 1,229.8   | 10.6   |
| EMPLOYEE BENEFITS                      | 1,428.1                         | 164.0                             | 1,592.1                            | 1,437.1                                | 155.0     | 1.3  |
| OTHER DIRECT OPERATING EXPENSES (ODOE) | 2,087.9                         |                                   | 2,087.9                            | 3,397.0                                | (1,309.1) | (11.2)   |
|  | 11,165.9                        | 484.4                             | 11,650.3                           | 11,574.6                               | 75.7      | 0.6  |

Note: The OHRC 2000-01 budget, with Management Board approval, increased by \$484.4 at year-end ( to fund Labour Adjustment Costs \$249.7 and salary awards \$234.7).





# COMMISSION ONTARIENNE DES DROITS DE LA PERSONNE SITUATION FINANCIÈRE À LA FIN DE L'EXERCICE 2000-2001 (EN MILLIERS DE DOLLARS)

| %9.0   | 7.27     | 9.472,11                               | 11,650.3                            | 4.484.4                             | 6.231,11                            |  |
|--|----------|--|-------------------------------------|-------------------------------------|-------------------------------------|--|
| %7:11-   | 1,808,1- | 0.795,5                                | 2,087.9                             |                                     | 6.780,2                             | Autres dépenses directes de fonctionnement |
| %E'I   | 0.221    | 1.784,1                                | 1,592.1                             | 0.491                               | 1,428.1                             | Avantages sociaux                          |
| %9.01  | 8.622,1  | 2.047,8                                | £.079,T                             | 4.02€                               | 6.649,7                             | Salaires et traitements                    |
| Écart en fin d'exercice<br>Part du budget<br>révisé (11 650,3) | \$       | Dépenses<br>réelles au<br>31 mars 2001 | Budget<br>révisé au<br>1002 snam 15 | sznemezsujA<br>nñ eb<br>ezizrexeice | Budget<br>des dépenses<br>2000-2001 |  |

Remarque : Le budget de 2000-2001 de la Commission a éré majoré de 484 400 dollars en fin d'exercice, avec l'approbation du Conseil de gestion (dont 249 700 dollars au titre de la reconversion de la main-d'œuvre et 234 700 dollars au titre de la rèvision des salaires.

Pourvois en appel devant la Cour suprême rejetés :

Croyance

Jazairi v. OHRC, York University et al.

Handicap McKenzie Forest Products Inc. v. Tilberg, OHRC et al.

Касе

Lino v. OHRC, University of Toronto et al. Payne v. OHRC, Otsuka Pharmaceutical Co.

Ltd. et al.

Robertson v. OHRC, Maple Leaf Foods Inc.

Etat samilial, état matrimonial

OHBC " Mr. A and Mr. B, Mr. C & D. Ltd.

O II BUILD

Race

Race

Payne v. OHRC

Harcèlement sexuel Thomas v. OHRC, Midas Canada Inc.

Autorisations d'appel devant la Cour d'appel refusées:

Lee v. OHRC, Toronto Hydro

Cour suprême du Canada

Harcèlement sexuel Blencoe c. Colombie-Britannique (Human Kights

(noissimmo)

# révision judiciaire) Cour divisionnaire (requêtes en

Age

Brown & Dargewitcz v. Ministry of Health

Стоуапсе

OHKC Speaker of the Legislative Assembly of Ontario v.

Handicap

Borland v. OHRC, Oxford County Board of OHRC v. Dofasco Inc., Jeffrey et al.

Education.

Касе

Ltd. et al.

Payne v. OHRC, Otsuka Pharmaceutical Co. Odia v. OHRC

Pieters v. OHRC et al.

Liao v. OHRC, University of Toronto et al.

Cour divisionnaire (appels)

Age, sexe

יום מן. OHRC, Kearney, J.L., Luis v. The Shelter Corp.

Harcelement sexuel, handicap, état familial

OHRC v. The Legislative Assembly et al.

Harcèlement sexuel

Thomas v. OHRC, Midas Canada Inc.

Cour d'appel

Handicap

Imperial Oil Ltd. v. OHRC, Entrop et al.

McKenzie Forest Products Inc. v. OHRC, Tilberg

Race

Omotayo v. Walsh & Associates Advertising Inc. Chan v. Ontario Power Generation Inc. et al.

Représailles

Habkirk v. Filet of Sole Sea Grill Ltd. et al.

Sexe

Beaudoin v. K.L. Sports Locker et al.

Larrow v. Ashley's Optical, cob Bargain Optical Chan v. Ontario Power Generation Inc. et al.

Goutziouslis v. National Security Technologies Spinks v. The Iravel Counter et al.

Gross v. Mipps Systems Solutions Inc. et al.

Kiczula v. Photo Menue Signs Inc. et al.

Harcèlement sexuel

Larrow v. Ashley's Optical cob Bargain Optical et Beaudoin v. K.L. Sports Locker et al.

Gross v. Mipps Systems Solutions Inc. et al. Spinks v. The Travel Counter et al.

Kiczula v. Photo Menu Signs Ltd. et al.

Orientation sexuelle

Habkirk v. Filet of Sole Sea Grill Ltd. et al.

Avances sexuelles

Gross v. Mipps Systems Solutions Inc. et al.

Inc. et al. Goutziouslis v. National Security Technologies

Kiczula v. Photo Menu Signs Ltd. et al.

### D'ENQUÊTE DECISIONS ET REGLEMENTS DE LA COMMISSION

Décisions

**93A** 

Handicap

Origine ethnique

Ltd. et al.

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Curling v. The Torimiro Corp. et al.

Règlements

Martinex v. Amodeo Produce et al. əgA

Martinex v. Amodeo Produce et al. Chan v. Ontario Power Generation Inc. et al. Ascendance

Chan v. Ontario Power Generation Inc. et al. Couleur

Croyance

Martinex v. Amodeo Produce et al.

Chan v. Ontario Power Generation Inc. et al. Origine ethnique

Omotayo v. Walsh & Associates Advertising Inc.

Etat familial

10 10 Chartrand v. Dryden Native Friendship Centre

Handicap

Farah v. Alladin Juice Bar & Restaurant et al. Tuck v. Baker

Duval v. Spectrum Leather Finishing Ltd. et al.

Dooley v. Econome Inc. et al. Wicks v. Vuteq Industries et al. McCormack v. Upak Disposals (1989) Ltd. et al. Lacz v. Crangle's Garage Ltd. et al. Moffatt v. Kinark Child & Family Services et al. Orientation sexuelle

Curling v. The Torimiro Corp. et al.

Harcèlement sexuel

Curling v. The Torimiro Corp. et al.

Duong v. Langstaff Auto Repairs et al.

Emergency Services et al.

Ambulance Service

Emergency Services et al.

Anderson & O'Neill v. The YMCA of Barrie

Vander Schaaf v. M & Property Management

Vander Schaaf v. M & Property Management

Jeppesen v. Corp. of the Town of Ancaster Fire & Moffatt v. Kinark Child & Family Services et al.

Shepherd v. Deluxe Toronto Ltd., Film House et

Jeppesen v. Corp. of the Town of Ancaster Fire &

Vander Schaaf v. M & Property Management

Hodge v. District of Halton and Mississauga Brock v. Tarrant Film Factory Ltd. et al.

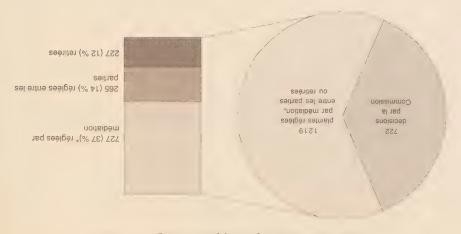
Ltd. et al.

Lieu d'origine

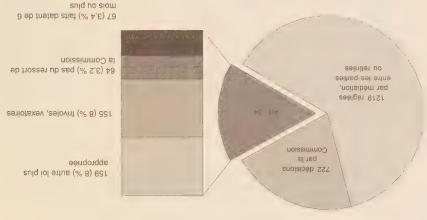
Ltd. et al.

Etat matrimonial

# Dossiers fermés, par type de règlement



# Application de l'article 34



### Ventilation des décisions de la Commission



# Tableau 3: Dossiers fermés, par dispositions invoquées et décisions Nombre total des dossiers fermés = 1 941

| Percentage of all Complaints | Total for All Complaints | Sum of Categories | Orientation sexuelle | Harcèlement sexuel | Sexe et grossesse | Représailles | Casier judiciaire | Race et couleur | État d'assisté social | Lieu d'origine | État matrimonial | Handicap       | État familial | Origine ethnique | Croyance    | Citoyenneté | Violation du règlement intervenu | Association | Ascendance | Âge        |   |
|------------------------------|--------------------------|-------------------|----------------------|--------------------|-------------------|--------------|-------------------|-----------------|-----------------------|----------------|------------------|----------------|---------------|------------------|-------------|-------------|----------------------------------|-------------|------------|------------|---|
|                              |                          | %00 I             | %1                   | %ε                 | %81               | %\$          | %0                | %61             | %0                    | %9             | %7               | %77            | %ξ            | %8               | %7          | %0          | %0                               | %1          | %S         | %9         | Pourcentage                             |
| %001                         | 146'1                    | 712,8             | os                   | 103                | €₽9               | 021          | 7                 | <b>₽</b> \$9    | 81                    | 861            | SS               | 122            | 601           | 285              | <del></del> | 61          | 71                               | 52          | 441        | 791        | :latoT                                  |
| %H                           | 222                      | 440               | 9                    | 91                 | 78                | 12           |                   | 18              | ε                     | 82             | S                | 76             | 6             | 68               | 4           | ₽           |                                  |             | 52         | 77         | Plaintes retirées                       |
| 37%                          | 727                      | 182,1             | 50                   | 88                 | 787               | 12           |                   | 907             | 8                     | 55             | ۷1               | 288            | 14            | 86               | 57          | 1           | ٤                                | Þ           | 85         | 15         | Médiation                               |
| %₺1                          | 597                      | 445               | 1                    | 14                 | 76                | SI           |                   | <b>≯</b> ∠      | ı                     | 27             | 9                | 711            | 6             | 98               | 4           | 7           | S                                | 7           | ٤١         | 70         | Réglées entre les parties               |
| %₽                           | ٤٧                       | 771               | 1                    | ٤                  | 87                | 8            |                   | 81              |                       | 9              |                  | 97             | Þ١            | Þ                | 7           | 7           | 1                                | 6           | 9          | <b>b</b> ! | Renvoyées à une<br>commission d'enquête |
| %81                          | 158                      | 719               | 3                    | 9                  | 17                | 72           | 7                 | 124             | ı                     | 88             | 91               | 7.7.1          | 50            | 84               | 6           | ε           |                                  | ٤           | 32         | 34         | Non traitées (article 34)               |
| %ε                           | 23                       | 159               | 1                    | I                  | 71                | 9            |                   | 35              | 3                     | 4              | ٤                | ۷1             | S             | 61               | Z           | ٤           |                                  | ı           | 13         | 1          | Faute de preuves                        |
| %81                          | 245                      | 124               | 71                   | S                  | 94                | 77           |                   | 911             | 7                     | 7.5            | 8                | <del>2</del> 9 | 11            | 9₺               | 71          | Þ           | ٤                                | 9           | 72         | 07         | Rejetées                                |

Remarque: Les plaignants peuvent baser leur plainte sur plusieurs motifs de discrimination. En conséquences, le nombre de motifs invoqués excède le nombre de plaintes.

# Tableau 4: Dossiers fermés, par dispositions invoquées et décisions Nombre total des dossiers fermés = 1 941

|                           | Adaptation | Contrats | Emploi | Services | Association professionnelle | Total des dispositions | Total des dossiers | Pourcentage du total des dossiers |
|---------------------------|------------|----------|--------|----------|-----------------------------|------------------------|--------------------|-----------------------------------|
| Pourcentage               | %9         | %5.0     | %LL    | %51      | %5'1                        | %001                   |                    |                                   |
| Total                     | 124        | 9        | 5641   | 567      | 78                          | 846,1                  | 146'1              | %001                              |
| Plaintes retirées         | 61         |          | 183    | 77       | 3                           | 777                    | 722                | %11                               |
| Médiation                 | 43         | I        | 519    | 99       | 7                           | 727                    | 727                | 37%                               |
| Réglées entre les parties | ۷1         |          | 215    | 18       | 7                           | 597                    | 597                | % <b>∀</b> I                      |
| Renvoyées à une           | 01         |          | 75     | 01       | ı                           | ٤٢                     | ٤٧                 | % <del>*</del>                    |
| Non traitées (article 34) | 15         | 1        | 777    | 001      | 91                          | 321                    | 158                | %81                               |
| Faute de preuves          | П          |          | 04     | 6        |                             | 09                     | 53                 | %8                                |
| Rejetées                  | 15         | Þ        | 891    | ZS       | <b>b</b>                    | 245                    | 245                | %E1                               |

Remarque: Vu qu'une plainte peut être fondée sur plusieurs motifs de discrimination illicites, le total des dispositions est supérieure au total des dossiers fermes.

# Tableau I: Plaintes déposées, par dispositions invoquées et motifs cités Mombre total de plaintes déposées = 1 775

| Pourcentage du total des plaintes all'complaints | Total des plaintes | Total des motifs | Lieu d'origine | Citoyenneté | Association | Ascendance | Représailles | Violation du règlement intervenu | Casier judiciaire | État d'assisté social | Handicap | État familial | État matrimonial | Âge | Orientation sexuelle | Harcèlement sexuel | Sexe et grossesse | Croyance | Origine ethnique | Race et couleur |  |
|--|--------------------|------------------|----------------|-------------|-------------|------------|--------------|----------------------------------|-------------------|-----------------------|----------|---------------|------------------|-----|----------------------|--------------------|-------------------|----------|------------------|-----------------|--|
|  |                    | *                | %71            | 0           | %7          | %01        | %E1          | 0                                | 0                 | %7                    | %14      | %9            | %7               | %6  | %7                   | %71                | %8٤               | %₽       | %81              | %8£             | Pourcentage du total de<br>esposées<br>plaintes déposées |
|  |                    | %001             | %9             | 0           | %1          | %5         | %9           | 0                                | 0                 | %1                    | %07      | %ξ            | %1               | %₺  | %1                   | %9                 | %81               | %7       | %8               | %81             | Pourcentage par motifs cités                             |
| %001   | SZZI               | 3728             | 717            | 8           | 98          | 173        | 152          | 6                                | 7                 | 97                    | 732      | 101           | 14               | 651 | os                   | 217                | 129               | 7.7      | 314              | <b>₹</b> 29     | Total:   |
| %7   | 30                 | SZ               | ε              |             | T           | 9          | ε            |                                  |                   |                       | 9        |               |                  | L   | 7                    |                    | 01                | ı        | 71               | <b>₽</b> Z      | Association prof.  |
| %\$I   | 897                | 988              | 75             | 3           | 11          | 45         | ٤            | j                                |                   |                       | 133      | ۷             | 6                | 17  | ٤١                   | S                  | 14                | 07       | 79               | 811             | Services   |
| %SL  | 1332               | 582              | 144            | Þ           | ٤١          | 176        | 217          | 8                                | 7                 | ş                     | Z1S      | 59            | 97               | 173 | 33                   | 50¢                | 909               | 84       | 554              | 86₺             | iolqm3   |
| %0   | 4                  | 4                |                |             |             |            |              |                                  |                   |                       | 9        |               |                  |     |                      |                    | I                 |          |                  |                 | Contrats   |
| %8   | 132                | 721              | 13             | 1           | 11          | Þ          | 8            |                                  |                   | 52                    | 04       | 67            | 9                | 8   | 7                    | 8                  | ٤١                | 3        | 91               | 34              | Adaptation   |

Remarque: Vu qu'une plainte peut être fondée sur plusieurs motifs de discrimination illicites, le total des motifs est supérieur au total de plaintes déposées.

# Tableau 2: Règlements intervenus en 2000-2001 à l'issue d'une médiation, par motifs cités dans les plaintes.

|                | Personnes | Dommages        |                                  |
|----------------|-----------|-----------------|----------------------------------|
| \$ \$\L'990'\L | Z19       | \$ 81.081,035,4 | Total pour toutes les plaintes*  |
| \$ 19.991.7    | 9         | \$ 00.006,81    | Orientation sexuelle             |
| \$ 87.725.4    | 6         | \$ 00.026,85    | Harcèlement sexuel               |
| \$ 68.269.2    | 145       | \$ 65.406,258   | Sexe et grossesse                |
| \$ 67.772,2    | 75        | \$ 00.610,062   | Représailles                     |
| \$ 28.129,7    | 101       | \$ 05.508,697   | Race et couleur                  |
| \$ 05.786,1    | Þ         | \$ 00.027,8     | État d'assisté social            |
| \$ 02.627,2    | 61        | \$ 05.038,801   | Lieu d'origine                   |
| \$ 00.248,2    | 01        | \$ 00.024,82    | État matrimonial                 |
| \$ 96.016,01   | 143       | \$ 60.185,474,1 | Handicap                         |
| \$ 94.827,4    | 54        | \$ 00.502,411   | Leat familial                    |
| \$ 89.907.7    | St        | \$ 02.008,345   | Origine ethnique                 |
| \$ 05.421,8    | 01        | \$ 00.242,13    | Стоуапсе                         |
| \$ 00.000,1    | I         | \$ 00.000,1     | Violation du règlement intervenu |
| \$ 00.002,1    | 7         | \$ 00.004,2     | Association                      |
| \$ 96'819'9    | 97        | \$ 00.896,171   | Ascendance                       |
| \$ 05.723,5    | 70        | \$ 00.022,27    | əgÂ                              |

<sup>\*</sup> Remarque: Les piaignants peuvent baser leur piainte sur plusieurs motifs de discrimination. En conséquences, le total des règlements intervenu par plainte (\$1,688,53).

Université d'Ottawa – Faculté de droit Université de Toronto – Cours d'admission des professeurs en

Université de Toronto – Faculté de droit Université York – Faculté de droit Woburn Collegiate Institute (Toronto) York Centre for Feminist Research York Region District School Board – York Region District School Board –

Secreur international
Center for Research-Action on Race Relations
Commission des droits de la personne
d'Itlande du Nord

Commission des droits de la personne de l'Ouganda, M. Hudson Anika Commission des droits de la personne du

**IMEIBIM** 

d'école

Déléguée de Norvège – Heidi Venner Federation of the Disabled People of Jiangsu Province

Gouvernement d'Israël – Rachel Benziman Gouvernement de Thaïlande

International Institute for Public Ethics
Ombudsman de la République de Corée

Secreur public
Centre d'accès aux soins communautaires de
North York

Centre des sciences de la santé de London Commission de la sécutité professionnelle et de l'assurance contre les accidents du travail

Corporation de la municipalité de Clatington Hôpital psychiatrique de Kingston Ministère des Finances Municipalité régionale de Halton Para-Med Home Health Services Para-Gervices de santé de Grey Bruce

TGStation
Toronto Arts Council
Toronto Employment Equity Practitioners'
Association
Toronto PRIDE 2000 (festival de fierté des gays)

United Way of Greater Toronto (Centraide)
Volunteer Centre of Toronto

Apressions

Secteur de l'éducation

Association des enseignantes et des enseignants franco-ontatiens

Association franco-ontarienne des conseils scolaires catholiques

City of Vaughan Youth Advisory Council

Collège Georgian, programme d'administration

des affaires Collège Humber – forum sur la santé

communautaire Collège Humbet – Programme

d'administration publique Collège Loyalist

Collège Seneca – Administration juridique et publique

Collège Sheridan – Programme d'architecture Conseil des écoles catholiques de langue française du Centre-Est

Don Bosco Catholic Secondary School

Institut d'études pédagogiques de l'Ontario (IEPO)

Kenton Adult Learning Centre

La Cité collégiale LINC-Ellesmere Toronto District School Board

Monsignor John Pereyma Catholic Secondary School

Ontario Business Educators Association Peel District School Board – Services d'entretien

R.S. Matthew Catholic School (Markham)

Contactez la Commission

Contactez la Commission

La création de procédures internes de règlement des plaintes pour Autres publications drogues et d'alcool (9/00) Politique sur les tests de dépistage de la consommation de inconvenantes liées au sexe (9/96) Politique sur le harcèlement sexuel et les remarques et conduites

LISTE DES ACTIVITÉS D'ÉDUCATION DU PUBLIC

(1002 - 0002)

Code des droits de la personne atteinte aux droits de la personne (6/96)

Poster sur les droits de la personne (peut être encadré)

participé à une médiation (9/99)

Rapport sur la satisfaction des personnes ayant Rapport annuel

Renters News/Auto Trader

Club Rotary de Mississauga

Ajax Multicultural Festival

Versa Care Centre (Hamilton)

Secteur communautaire

Wellsizing (conférence)

Shibley Righton LLP

de l'Ontario

l'Ontario

Canadian Lesbian & Gay Archives

Association pour l'intégration communautaire

Association française des municipalités de

Diversity Update 2001 (conférence) (conférence) Corporate Equal Opportunity Group Canadian Tire Auctioneers' Association of Ontario Association du Barreau canadien - Ontario Secteur commercial et juridique

Fédération des associations canadiennes Fasken Martineau DuMoulin s.r.l.

d'électrolyse - Ontario

HRPAO - Halton Fédération du travail de l'Ontario

HRPAO - Présidentes et présidents des HRPAO - Kingston

anoisivib

(OATAH) ointario Human Resources Professionals Association of

PolyFab North Bay & District Chamber of Commerce Les restaurants McDonald du Canada Lancaster Publishing (conférence)

Tamil Anti-Racism Committee Parents partenaires en éducation handicapées LE MARCHÉ d'emplois pour les personnes INFACT Canada Council on American-Islamic Relations Ontario Co-ordinators' Association of Southwestern Community Development Network

# LISTE DES PUBLICATIONS

| Web  | Ontario      |
|------|--------------|
| Site | Publications |

| ^        | de l'identité sexuelle (3/00)  |
|----------|--|
|          | Politique sur la discrimination et le harcèlement en raison                          |
| ^        | Politique sur la mutilation génitale féminine (11/00)                                |
| ^        | observances religieuses (10/96)  |
|          | Politique sur la croyance et les mesures d'adaptation relatives aux                  |
| <i>/</i> | Politique relative aux bourses d'études restrictives (7197)                          |
| ^        | d'accommodement (11/00)  |
|          | Politique et directives concernant le handicap et l'obligation                       |
| ^        | (toutes les politiques – avant le 1999) (12/99)                                      |
|          | Politique des droits de la personne en Ontario                                       |
|          | Politique concernant les renseignements médicaux liés à l'emploi (6/96)              |
| <i>/</i> | (6/96) professionnelles  |
|          | Politique concernant le poids et la grandeur comme exigences                         |
| <i>/</i> | Politique concernant le permis de conduire comme condition d'emploi (6/96)           |
| <i>/</i> | plaisanteries et autres (6/96)   |
|          | Politique concernant le harcèlement racial par des insultes, des mauvaises           |
| ^        | Politique concernant la discrimination liée au VIH et au SIDA (11/96)                |
| <i>^</i> | Politique concernant la discrimination liée à la grossesse (5/99)                    |
| <i>/</i> | sur l'orientation sexuelle (1/00)  |
|          | Politique concernant la discrimination et le harcèlement fondés                      |
| <i>/</i> | Politique concernant la discrimination et la langue (6/96)                           |
| <i>^</i> | Directives pour les programmes spéciaux (11/97)                                      |
|          | Politiques et Directives   |
| A        | Vous embauchez ? Pensez aux droits de la personne (10/99)                            |
| ^        | la personne: Le guide des parties mises en cause ou intimées (5/97)                  |
|          | Que faire si on porte plainte contre vous pour atteinte aux droits de                |
| ^        | parties plaignantes (5/97)   |
|          | Que faire en cas d'atteinte aux droits de la personne : Le guide des                 |
| ^        | Protection des droits religieux (1/00)   |
|          | français/anglais; gujrati/tamoul; hindi/punjabi; bengali/ourdou) (7/00)              |
|          | Les droits de la personne en Ontario : Guide des plaignants (disponible en           |
| /        | Les droits de la personne au travail (9/99)  |
| 1        | au sexe d'une personne (11/96)   |
|          | Harcèlement sexuel et autres actions ou commentaires liés                            |
| ^        | Le harcèlement racial par des insultes, des mauvaises plaisanteries et autres (6/96) |
| /        | (disponible en français/anglais; arabe/somalien, swahili/amharique)                  |
|          | La mutilation génitale féminine: questions et réponses                               |
| ^        | Vos droits avant, pendant et après la grossesse (5/99)                               |
| 1        | Guide du Code des droits de la personne (5/99)                                       |
| /        | Ce qu'il faut savoir sur les services de médiation (5/97)                            |
|          | Publications en langage clair  |

# Direction des politiques et de l'éducation

La Direction des politiques et de l'éducation joue un rôle principal et oriente la promotion et l'avancement des droits de la personne. Elle a aussi pour mission d'appuyer l'application du Code.

La Direction favorise la promotion des droits de la personne en assurant le respect du Code et des obligations internationales dans le domaine des droits de la personne. Elle élabore des énoncés de politique et des directives officielles et mène des recherches sur une vaste gamme de questions reliées aux droits de la personne et à la justice sociale. La Direction est responsable des relations à l'échelle nationale et internationale, de la gestion des dossiers, des rapports avec les médias et les intervenants, du site Web et des publications. De plus, elle mène des consultations publiques, anime des groupes de discussion et représente la Commission auprès de groupes de travail internationaux et de délégations de l'étranger.

La Direction est responsable de la planification stratégique des campagnes d'éducation du public, des programmes de communications au niveau de l'organisation, et de la mise en oeuvre d'un vaste éventail de programmes éducatifs et d'initiatives de partenatiat, comme des campagnes de sensibilisation, des conférences et des ateliers. Finalement, elle fournit un soutien en matière de politiques et de communications au Bureau du directeur général.

# Direction des services juridiques

La Direction des services juridiques aide la Commission à s'acquirter de tous les éléments de son mandat, qu'il s'agisse de veiller au respect du Code, d'éduquer le public ou de plaider des causes. Elle fournir des conseils juridiques aux hauts fonctionnaires, et aux chefs et agents de la Direction de la médiation et des enquêtes en ce qui concerne la préparation des plaintes et la conciliation des parties. Enfin, elle donne à la Commission les avis juridiques que celle-ci lui demande et fournit les avocats qui représentent la Commission d'enquête et les tribunaux lots des révisions judiciaires et des appels.

# STRUCTURE DE LA COMMISSION

# Bureau du commissaire en chef

Le commissaire en chef joue le rôle principal parmi les commissaires qui forment la Commission. Il veille à ce que la Commission s'acquirte des fonctions que lui impose la loi d'une manière qui garantit le respect des droits de la personne en Ontario, tant dans le secteur public que dans le secteur privé. Le commissaire en chef et les commissaires établissent les principes directeurs de la Commission et statuent sur les plaintes déposées en application du Code.

# Bureau du directeur général

Le directeur général joue le rôle principal parmi les chefs des directions qui aident la Commission à s'acquirter des fonctions que lui impose la loi. Il dirige l'élaboration et la mise en oeuvre des plans d'affaires et des plans opérationnels se rapportant à ces directions, de même que la planification et l'exécution des initiatives visant à améliorer leur aménagement organisationnel. Le Bureau du registraire, qui relève du Bureau du directeur général, traite les demandes de réexamen des décisions relatives aux plaintes pour atteinte aux droits de la personne, coordonne l'ensemble des fonctions liées aux réunions de la Commission et des comités, et s'occupe de tout ce qui touche l'accès à l'information et l'ombudsman.

# Direction de la médiation et des enquêtes

La Direction de la médiation et des enquêtes assure toutes les fonctions de la Commission liées à l'exécution du Code.

L'Unité des renseignements et de l'accueil est le premier point de contact du public avec la Commission. Ses agents répondent aux questions des personnes qui communiquent avec la Commission des quatre coins de la province et formulent une première ébauche de leurs plaintes, s'il y a lieu. Le Buteau de la médiation assure les services de médiation, mais traite aussi les demandes sous l'angle de l'article 34 du Code, qui prévoit que la Commission peut, à sa discrétion, décidet de ne pas traiter une plainte si celle-ci pourrait ou devrait être traitée en vertu d'une autre loi, si elle est faite de mauvaise foi, si elle est déposée après le délai prévu ou si elle n'est pas du ressort de la Commission. Le Buteau des enquêtes mène des enquêtes sur les plaintes et essaie de résoudre les plaintes par conciliation.

La Direction met également au point des stratégies plutiannuelles pour gérer efficacement les dossiers de la Commission et définit la marche à suivre pour la médiation et les enquêtes. Enfin, elle appuie les activités d'éducation du public que la Commission entreprend conformément à son mandat.

présidente du conseil d'administration du Centre for Equality Rights in Accommodation, et vice-présidente du conseil consultatif sur l'accessibilité des transports de la Commission des transports de Toronto. Elle fait également du bénévolat au Centre des sciences de la santé Sunnybrook dans le cadre de la course annuelle pour la recherche.

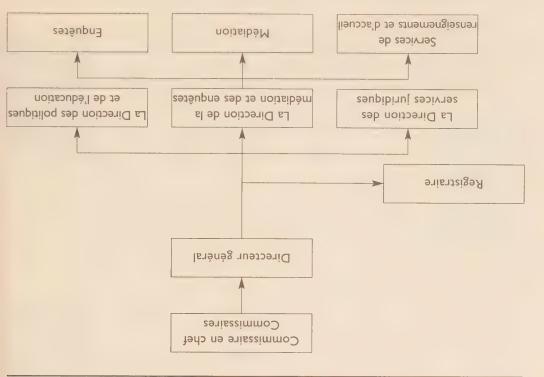
# MAE RADFORD

Mae Radford est membre de la Commission depuis avril 1999. M<sup>me</sup> Radford détient un diplôme en soins infirmiers du Toronto Western Hospital et un baccalauréat ès arts en administration de la santé de l'université York. Aujourd'hui, elle gère une équipe de 1 700 bénévoles qui offrent des services de visites amicales, des soins palliatifs, des services de transport et des repas à domicile pour l'organisme Infirmières de l'Ordre de Victoria de Hamilton-Wentworth.



Mine Radford fait partie de la Coalition of Community Health and Support Services, qui préconise la prestation de soins de santé en milieu communautaire. Elle est membre de l'Association ontarienne de soutien communautaire et présidente du district B. M<sup>me</sup> Radford est aussi vice-présidente du comité populaire de lutte contre la violence faite aux femmes de la ville de Burlington.

# ORGANIGRAMME DE LA COMMISSION



de Halton. Elle a de plus dirigé un cours d'enseignement du français comme langue seconde pour le ministère de l'Éducation.

### ABDUL HAI PATEL

Abdul Hai Parel est membre de la Commission depuis avril 1999. M. Patel a fait ses études primaires en Inde, ses études secondaires à la Barbade et ses études postsecondaires à l'Université York. À l'heure actuelle, il travaille comme spécialiste technique des systèmes pour Ontario Hydro.

M. Patel a reçu l'une des 125 médailles commémoratives que décerne le gouverneur général pour services à la communauté. Il a également obtenu la Distinction de l'Ontario pour services bénévoles du ministère des Affaires

civiques, de la Culture et des Loisirs. Il fait partie du comité consultatif avec les minorités de l'Asie du Sud et de l'Asie occidentale de la police de Toronto et est coordonnateur du conseil islamique de coordination des imams du Canada. M. Patel est vice-président de l'Association of Employees for Employment Equity d'Ontatio Hydro et membre du Provincial Committee of Power Workers Union on Employment Equity and Diversity.



# CHRISTIANE RABIER

Christiane Rabier a été nommée commissaire en avril 1999. Titulaire d'un doctorat de l'université de Nice-Sophia-Antipolis, M<sup>me</sup> Rabier a fait sa maîtrise à l'Université de Montréal et étudié le droit public à l'université de Montpellier. À l'heure actuelle, elle est directrice du département des sciences politiques et vice-doyenne des sciences humaines de l'Université Laurentienne de Sudbury.



Elle joue un rôle actif au sein de la collectivité francophone de Sudbury

et a participé à l'élaboration d'un programme visant à encourager les femmes francophones à faire des érudes postsecondaires. Elle a également été conseillère auprès de TV Ontatio dans le domaine de l'éducation permanente. M<sup>me</sup> Rabiet a été bénévole pour les Jeux olympiques spéciaux du Canada en 1998 et l'Opération Mez-rouge en 1999.



### DUINNAM NNA-HTIQU

Judith Ann-Manning fair partie de la Commission depuis février 2000. M<sup>me</sup> Manning, qui est conseillère en accessibilité des services et en aménagement pour accès facile, a fair des études de criminologie et de droit à l'université de Toronto. Actuellement coordonnatrice du comité d'accessibilité en fauteuil roulant de l'université de Toronto, M<sup>me</sup> Manning a été présidente du comité consultatif de North York pour les personnes handicapées, codu comité consultatif de North York pour les personnes handicapées, co-

#### NALIN KANUCK

Nalin Kanuck a été nommé commissaire en septembre 1997. Expert-conseil en gestion et en finances, M. Kanuck est aussi conseiller en relations interraciales auprès du conseil de l'éducation de la région de York. Au Sri sur des incidents de violation des droits de la personne. Il a aussi été président et directeur général du conseil de développement régional au ministère du développement régional de ce pays. M. Kanuck a été directeur du National de développement régional de ce pays. M. Kanuck a été directeur du National



Youth Service Council, qui relevair du bureau du premier ministre du Sri Lanka. Il détient un baccalauréat ès arts de l'université de Ceylan et un diplôme en administration publique de l'université de Colombo, au Sri Lanka. Docteur honoris causa en administration publique de la City University of California, M. Kanuck est diplômé du Canadian Institute of Certified Administrative Managers et fellow du British Institute of Management, en Angleterre.

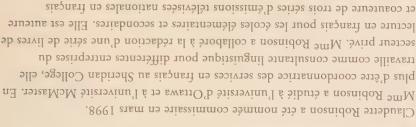
#### MICHEL LALONDE

Après avoir été ces vingt dernières années conseiller municipal et préfet adjoint, Michel Lalonde est aujourd'hui préfet d'Hawkesbury Est. Sa nomination à la Commission remonte à décembre 1997. En 1993, M. Lalonde a été président du conseil des comrés unis de Prescott et Russell. Il a été élu au comité de direction, au comité de planification et au comité des travaux publics du conseil. Ancien président du conseil de Prescott Mutual Insurance et du conseil d'administration de l'Hôpital général de Hawkesbury



and District General Hospital Inc., M. Lalonde a reçu le Prix d'excellence du comté de Prescott en 1985. Agriculteur de profession, il joue un rôle actif au sein de la collectivité agricole locale. Il a siégé au conseil d'administration de la commission locale de l'emploi agricole de Glengarry, Prescott et Russell de 1989 à 1996 et présidé le comité d'examen par les pairs du plan d'agriculture écologique de 1993 à 1997.

#### CLAUDETTE ROBINSON





produites pour la programmation éducative de tfo, la chaine française de TVO)ntatio, dont une qu'elle a également animée. M<sup>me</sup> Robinson, qui a enseigné des cours d'été à l'Université d'Ottawa, a été engagée comme experte-conseil par le conseil de l'éducation

Huron. Le Révérend Père Cliff, qui a été formé au King's College et au Huron College de l'université Western Ontario, a servi à l'aumônerie du St. Joseph's Health Centre à London et dans plusieurs congrégations de London, Simcoe, Hanover et Durham, en Ontario.

# RICHARD MILES

Avant sa nomination à la Commission en juillet 1992, Richard Miles a travaillé au gouvernement de l'Ontario comme haut fonctionnaire au ministère des Services sociaux et communautaires, au Secrétatiat à la condition des personnes handicapées du gouvernement fédéral, et, plus récemment, au sein du Handicapped Action Group Incorporated à Thunder Bay. M. Miles avait été nommé par la ministre des Affaires civiques, de la Culture et des avait été nommé par la ministre des Affaires civiques, de la Culture et des Loisirs au Groupe d'étude sur le Code des droits de la personne de l'Ontatio,



dont l'un des rôles avait été de procéder à un examen des activités de la Commission ontatienne des droits de la personne.

# MARNIE PAIKIN, C.M.

Marnie Paikin est commissaire depuis septembre 1996. Ancienne présidente du Conseil canadien des Chrétiens et des Juifs, Mme Paikin a reçu le «Human Relations Award» de cet organisme et le «Outstanding Woman Award» du gouvernement de l'Ontatio. Mme Paikin, que la ville de Hamilton a accueillie dans sa «Gallety of Distinction», a également reçu l'Ordre du Canada. Elle est à l'heure actuelle membre du conseil d'administration d'Énergie atomique du Canada Ltée et de Westcoast Energy Inc.



#### PETER LI

Directeur général du Ming Pao Daily News (édition de l'Est), Peter Li est membre de la Commission depuis septembre 1997. Il fait partie du comité de développement sino-canadien de la Fondation du Hospital for Sick Children et siège au Asian Business Committee of Metro Toronto, ainsi qu'à l'organisme Junior Achievement (Jeunes Entreprises) de la région de York. Ancien membre du conseil consultatif sut la clientèle asiatique de Canada Trust, il a été directeur de Chinese Information and Community Services et Trust, il a été directeur de Chinese Information and Community Services et



vice-président de la Chinese Canadian Advertising, Media and Marketing Association. Enfin, M. Li a été directeur général de l'hôtel Victoria et administrateur de projet du Chinatown Centte.

#### LISTE DES COMMISSAIRES

# KEITH C. NORTON, c.r., B.A., LL.B. Commissaire en chef

La nomination de Keith Norton au poste de commissaire en chef de la Commissaion ontarienne des droits de la personne remonte au 18 juillet 1996, Éducateur et avocat de formation, M. Norton a fait des études de droit à l'université Queen's à Kingston et détient un diplôme en pédagogie de l'Ontario College of Education, aujourd'hui la faculté de l'éducation de l'université de Toronto. Il a exercé la profession d'avocat spécialisé en droit



pénal et en droit de la famille à Kingston et il a enseigné aux paliers secondaire et postsecondaire.

M. Norton a été tout à tout ministre des Services sociaux et communautaires, adjoint parlementaires du Trésorier de l'Ontario et ministre de l'Éducation et ministre des intergouvernementales, ministre de la Santé, ministre de l'Éducation et ministre des Collèges et Universités au gouvernement de l'Ontario.

Entre 1981 et 1983, alors qu'il détenait le portefeuille de l'Environnement, M. Norton a été le premier membre d'un conseil des ministres canadien à témoigner devant un comité du Sénat américain. Tout au long de sa carrière, M. Norton s'est fait le champion des personnes handicapées, des personnes âgées et des personnes défavorisées. Il a également participé à plusieurs entreprises commerciales.

M. Norton est un ancien président du Tribunal des droits de la personne du

Canada.

#### CHEKAT BLONDELL

Cheryl Blondell s'est jointe à la Commission en février 1997. Sous-procureure de la Couronne au ministère du Procureur général, elle a travaillé comme avocate de service pour le Régime d'aide juridique de l'Ontario, assurant la défense des accusés dans des causes criminelles. Pendant l'été 1989, Mme Blondell a fait partie de l'équipe chargée par la Commission ontarienne des droits de la personne de mettre sur pied une unité des enquêtes sur la discrimination systémique.



# R.P.WILLIAM G. CLIFF

Le Révérend Père William Grant Cliff, pasteut de l'église St. John the Evangelist à Strathroy, dans le diocèse de Huron, fait partie de la Commission depuis février 1997. Il est ancien membre du conseil de l'université Western Ontario, aumônier militaire de la Légion royale canadienne et membre du comité chargé des relations entre anglicans et catholiques du diocèse de



2001-2002 Le tableau ci-après résume les engagements publics de la Commission pour l'exercice

#### SERVICE ENGAGEMENTS POUR 2001-2002

Mener une nouvelle campagne de sensibilisation du public.

Atteindre un taux de satisfaction de 80 pour 100 parmi les personnes qui

Mettre en œuvre la phase 2 de l'initiative à l'intention des personnes autochtones.

participent aux activités d'éducation du public.

### **estion**b promotion de ces personne et droits de la Sensibilisation aux

Produire le rapport de consultation relatif à la discrimination fondée sur l'âge. **Politiques** 

uns et des autres. général, toujours en langage simple, expliquant les droits et les responsabilités des consultation avec les employeurs et les employés, de même qu'un guide plus dans le domaine de l'emploi pour distribution sur les lieux de travail en Elaborer des guides en langage simple sur les droits des personnes handicapées

de l'éducation. Lancer des consultations sur les droits des personnes handicapées dans le secteur

Elaborer le rapport de consultation sur l'accessibilité des services de transport en

internationales du Canada. Veiller à ce que les nouvelles politiques tiennent compte des obligations

# lisussa 39 Renseignements

enquête

Médiation et

le délai moyen de préparation des plaintes à entre 15 et 20 jours. agente ou un agent de l'Unité des renseignements et de l'accueil à 2,5 minutes et

Ramener la durée moyenne d'attente des personnes qui demandent à parler à une

en litige ont consenti à une tentative de médiation. Arriver à régler au moins 65 pour 100 des plaintes à l'égard desquelles les parties

aboutisse en l'espace de 3 à 6 mois. Si les parties consentent à une tentative de médiation, veiller à ce que celle-ci

son dépôt jusqu'à la fermeture du dossier. Ramener de 15,4 à 14 mois la durée moyenne de traitement d'une plainte, depuis

Projets corporatifs

Entamer la mise en œuvre du plan stratégique pour 2001-2003.

| SERVICE             | ENGAGEMENTS PRIS POUR 2000-2001  | RÉALISATIONS EN 2000-2001<br>(au 31 mars 2001, sauf indication<br>contraire)  |
|---------------------|--|---|
|                     | Réduire la durée médiane d'ouverture<br>des dossiers à moins de 9 mois.            | Âge médian des dossiers au 31 mars<br>2001 : 7 mois.  |
|                     | Réduire la durée moyenne d'ouverture<br>des dossiers à 12 mois.                    | Äge moyen des dossiers le 31 mars<br>2001 : 1004 mois.  |
| Projets corporatifs | Mettre en œuvre des normes de contrôle<br>de la qualité.                           | Élaboration de normes relatives à la qualité des services applicables aux diverses directions de la Commission.   |
|                     | Élaborer un programme de formation<br>sur les techniques d'éducation du<br>public. | Suite aux importantes initiatives prises durant l'exercice concernant les droits des personnes handicapées, l'organisation des ressources en vue de formation du personnel de la Commission aux droits des personnes handicapées et aux répercussions opérationnelles des nouvelles Politique et directives concernant le handicap et et directives concernant le handicap et |
|                     | Lancer une étude sur l'accessibilité.  | Enquête interne sur l'accessibilité des<br>services de la Commission. Production  |

site Web plus facile d'accès.

d'une liste des services ou mesures accessibles, en vue de son affichage sur le site Web de la Commission.

Augmentation des installations d'ATS de la Commission et lancement d'un

| EBAICE          | ENGAGEMENTS PRIS POUR 2000-2001   | RÉALISATIONS EN 2000-2001 (au 31 mars 2001, sauf indication contraire)   |
|-----------------|---|--|
|                 |   | commissions des droits de la personne par rapport aux droits économiques et sociaux (Human Rights Commissions and Economic and Social Rights).   |
|                 |   | Enfin, le personnel de la Direction des<br>politiques et de l'éducation a assuré la<br>formation du reste du personnel à<br>l'application des nouvelles politiques,<br>en plus d'avoir mené une enquête  |
|                 |   | interne sur l'accessibilité des services et<br>installations de la Commission.   |
| รวนอนาอนชีเอรนส | Réduire le délai moyen de réponse aux appels reçus directement par les agents des services de renseignements à moins de 2 minutes | Délai moyen de réponse ramené à 3,4 minutes.   |
| lieuss          | Préparer les plaintes dans les 15 à 20<br>jours qui suivent la réception du<br>questionnaire prévu.                               | Durée moyenne de préparation des plaintes ramenée à 28,6 jours. Le renforcement des efforts pour accélérer la préparation des plaintes s'est traduit par une réduction de cette durée à 9,4 jours au cours du dernier trimestre de l'exercice. |
| noitsibè        | Obtenit un taux de règlement des<br>plaintes soumises à une médiation d'au<br>moins 65 pour 100.                                  | Taux de règlement des plaintes soumises à une médiation : 73 pour 100 (comparable aux 74 pour 100 obtenus au couts de l'exercice précédent).   |
|                 | Réglet au moins 1 300 dossiets.   | Règlement de 1 246 plaintes grâce aux<br>services de médiation.  |
| səşənbu         | Réglet 80 pour 100 des dossiers ouverts<br>il y a plus de deux ans le 1et avril 2000.   | Règlement de 572 des 620 plaintes répondant à ce critère, ce qui correspond à 92 pour 100 de l'objectif visé.  |
|                 | Régler au moins 850 dossiers grâce au processus d'enquête.  | Règlement de 696 plaintes grâce au<br>processus d'enquête, ce qui correspond<br>à 81 pour 100 de l'objectif visé.  |

#### RÉALISATIONS EN 2000-2001 (au 31 mars 2001, sauf indication contraire)

# ENGAGEMENTS PRIS POUR 2000-2001

l'identité sexuelle.

SERVICE

Publication le 21 juin 2000 de la Politique sur la discrimination et le harcèlement en raison de l'identité sexuelle, disponible sur son site Web, sut papiet et dans divers autres formats.

Approbation du document d'étude par la Commission en juin 2000.

Publication le 22 mars 2001 d'un nouveau document intitulé Politique et directives concernant le handicap et l'obligation d'accommodement.

Publication le 19 février 2001 du Document de travail sur les services accessibles de transport en commun en Ontario.

« Dialogue » sur le thème des droits de la personne et le développement humain organisé le 21 mars 2001 en collaboration avec l'organisme Community Development Network.

Autres réalisations importantes sur le plan des politiques :

Durant l'exercice écoulé, la Commission a révisé sa Politique concernant les rests de dépistage de l'alcool et d'autres drogues à la lumière d'appel de l'Ontatio dans l'affaire as Politique sur la mutilation génitale féminine, cette fois pour tenir compte des modifications apportées aux lois de protection de l'enfance et au Code criminel. Le personnel de la Code publié en février 2001 un document publié en février 2001 un document de recherche sur le rôle des

Publier un exposé de principe sur

Publier un document d'étude sur les droits de la petsonne dans le domaine des assurances

Publier une version révisée des Directives pour l'évaluation des personnes en matière d'adaptation des personnes handicapées.

Publier le rapport de l'enquête sur l'accessibilité aux véhicules de transport en commun.

Organiser un deuxième dialogue sur les politiques.

| RÉALISATIONS EN 2000-2001 (au 31 mars 2001, sauf indication contraire)   | ENGAGEMENTS 1909-2001  | SERVICE    |
|--|--|------------|
| Mise sur pied par la Commission et pat son corollaire au Québec, la  | Lancer l'initiative politique pour l'ACCDP en 2001.  |            |
| Commission des droits de la personne et des droits de la jeunesse, du nouveau comité des politiques et de la recherche de l'Association canadienne   |  |            |
| recherche de l'Association canadienne des commissions et conseil des droits de la personne (ACCDP). Co-  |  |            |
| présidence par les deux commissions du sous-comité chargé des résolutions traitant des droits économiques et sociaux et de l'influence de la situation sociale sur ces droits.   |  |            |
| Feuilles de renseignements produites et affichées sur le sire Web de la Commission le 22 mars 2001.  | Accroître l'accessibilité des publications<br>grâce à des feuilles de renseignements<br>d'une page sur rous les grands domaines<br>d'intervention du Code. |            |
| Taux de satisfaction: 86 pour 100, mesuré sur une échelle de cotation numérique à 5 niveaux par rapport à 3 critères: la qualité d'un exposé ou autre activité (présentation et animation); l'efficacité des documents présentés ou distribués et l'utilité de l'activité. | Obtenir un taux de satisfaction de 80 pour 100 parmi les participants à toutes les activités d'éducation du public.  |            |
| Lancement du nouveau site Web le 22 mars 2001.   | Lancer un nouveau sire Web qui accroît<br>l'accessibiliré, est plus facile à consulter<br>et est plus axé sur les clients.                                 |            |
| Publication le 31 mai 2000 d'un document de travail intitulé Discrimination et l'âge : problèmes relatifs aux droits de la personne vécus par les personnes âgées en Ontario.  | Publier un document sur la<br>discrimination fondée sur l'âge.   | Politiques |
| Diffusion d'un document de travail en septembre 2000 et organisation de consultations aux quatre coins de la province dutant l'automne et l'hiver.   | Organiser des consultations et élaborer<br>un document de travail sur la<br>discrimination fondée sur l'âge.   |            |

# CADRE DE RESPONSABILISATION

accomplissements par rapport aux objectifs établis antérieurement. Commission se fixe pour l'exercice à venir et à rendre compre de ses derniers rapports annuels. Ce cadre vise à préciser les objectifs que la La Commission a présenté son cadre de responsabilisation dans ses trois

l'exercice 2000-2001. Le tableau ci-après résume les accomplissements de la Commission durant

contraire) (au 31 mars 2001, sauf indication REALISATIONS EN 2000-2001

sensibilisation de la population. Organiser une nouvelle campagne de PRIS POUR 2000-2001

**ENGAGEMENTS** 

ces droits et promotion de de la personne aux droits Sensibilisation

**SERVICE** 

tant pour les femmes que les enfants. l'allaitement est un droit fondamental plusieurs centres urbains sur le fait que services de transport en commun de de Toronto, d'une campagne dans les Canada et le bureau de santé publique Lancement, de concert avec INFACT

autochtones à l'échelle de la province. l'égalité des droits des personnes des droits de la personne et à renforcer protections que leur accorde le Code autochtones hors réserve aux vise à sensibiliser les personnes première phase du programme, qui Employment and Training, de la Friendship Centres et Grand River Ontario Federation of Indian Achèvement par deux organismes,

internationaux. aux termes de divers instruments des engagements pris par le Canada Prise de position concernant le respect handicap et la grossesse (voir ci-après). fondée sur l'âge, l'existence d'un politique traitant de la discrimination dans les nouveaux documents de en matière de droits de la personne Intégration des normes internationales

> Autochtones en œuvre. Mettre le programme à l'intention des

toutes les nouvelles initiatives politiques. Intégrer les obligations internationales à

objectif, atteignant un taux de 73,2 pour 100. régler 65 pour 100 des plaintes par voie de médiation : elle a dépassé cet

sur le nombre de plaintes soumises à une enquête. Depuis quelques années, le La réussite des services de médiation volontaire a des retombées favorables

les plus anciens, en particulier ceux en cours de traitement depuis plus de 12 mois. à la Commission de concentrer ses ressources en matière d'enquête sur les dossiers passant de 1 780 en mars 1998 à 631 au 31 mars 2001. Cette évolution a permis nombre de plaintes sur lesquelles la Commission fait enquête diminue sans cesse,

atteint 92 pour 100 de son objectif. Grâce à la fermeture des dossiers les plus anciens, Commission avait réussi à fernier 572 des 620 dossiers visés, autrement dit elle avait trairement depuis plus d'un an. À la fin de l'exercice, au 31 mars 2001, la fermer, avant le 1er avril 2001, plus de 80 pour 100 des dossiers en cours de Un autre engagement pris par la Commission pour l'exercice écoulé était de

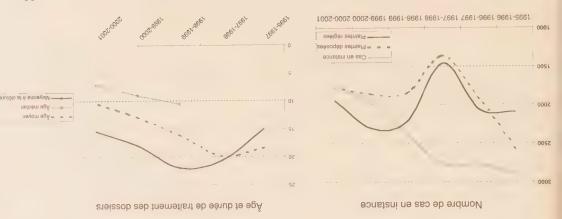
#### DES DOSSIERS EN **INVENTARE** COURS DE TRAITEMENT

l'âge médian des dossiers en cours de traitement a pu être ramené à 10,4 mois.

plaintes et l'éducation du public. dans plusieurs domaines, dont la gestion des dossiers, le délai de traitement des Au cours de l'exercice 2000-2001, la Commission a fait de grands progrès

chiffres reflètent les progrès constants réalisés par la Commission à cet égard. 2745 le 31 mars 1998, 2 386 le 31 mars 1999 et 1 952 le 31 mars 2000. Ces nombre de dossiers en cours de traitement s'élevait à 1 781, comparativement à En 2000-2001, elle a ouvert 1 775 dossiers et en a clos 1 941. Au 31 mars 2001, le Encore une fois, la Commission a réglé plus de dossiers qu'elle n'en a ouverts.

d'enquête sur les droits de la personne. La Commission a par ailleurs renvoyé 73 plaintes devant la commission



# DIRECTION DE LA MÉDIATION ET DES DAQUÊTES

# SERVICES DE RENSEIGNEMENTS ET D'ACCUEIL

L'Unité des renseignements et de l'accueil est le premier point de contact du public avec la Commission. Les personnes qui appellent ces services peuvent y obtenit des renseignements sur les droits de la personne en général, la matche à suivre pour déposer une plainte et d'autres aspects de l'application du Code des droits de la personne. En 2000-2001, l'Unité a reçu 163 765 appels. Les agentes et agents des services de renseignements ont pris 52 848 appels, soit 81 pour 100 des of quelqu'un de vive voix. En moyenne, les agentes et agents ont été en mesure de prendre la ligne des personnes au bout de la ligne avait choisi l'option de parlet à questionnaires où la personne au bout de la ligne avait choisi l'option de parlet à questionnaires et reçu 2 351 questionnaires de mesure de prendre la ligne des personnes en attente en l'espace de 3,4 minutes. L'Unité a envoyé 4 133 questionnaires et reçu 2 351 questionnaires dûment remplis et complétés en tetour. Durant l'exercice écoulé, 1 775 personnes ont déposé une plainte officielle.

# SERVICES DE MÉDIATION ET D'ENQUÊTE

Sur les 1 941 fermetures de dossiers durant l'exercice écoulé, 1 219 étaient le résultat d'une médiation réussie, d'un règlement à l'amiable entre les parties, avec ou sans l'aide de la Commission ou d'un retrait de la plainte, ou encore, dans 722 cas, d'une décision de la Commission.

Le recours croissant à la médiation, qui gagne en faveur tant chez les parties plaignantes que chez les parties intimées, explique en grande partie les progrès réalisés par la Commission en matière de réduction de son inventaire de dossiers. En effet, des personnes spécialement formées offrent aux parties en litige la possibilité, si elles le désirent, de tenter de résoudre leur différend par voie de médiation au tout début du processus. La médiation aboutit en général dans les 3 à 6 mois qui suivent le dépôt d'une plainte. Durant l'exercice écoulé, 51 pour 100 des plaintes dont la Commission était saisie ont été réglées grâce à ses services de médiation ou à d'autres techniques de règlement à l'amiable plus usuelles, y compris la conciliation.

La Commission a satisfait aux exigences en matière de rendement que le ministère lui avait fixées dans son plan d'activités pour l'exercice 2000-2001. Parmi les engagements de la Commission pour l'exercice écoulé était celui de

Décision de la commission d'enquête: La commission d'enquête a conclu que M. Jeppesen a bien un handicap au sens du Code. Elle a par ailleurs conclu que le fait d'exiger que tous les pompiers à temps plein soient titulaires d'un permis de conduire de catégorie F, afin qu'ils puissent aussi conduire une ambulance, pompier à temps plein toute personne ayant une déficience visuelle. Enfin, la commission d'enquête a conclu que l'employeur aurait très bien pu tenir compte des besoins de M. Jeppesen, sans subir lui-même de préjudice injustifié, en l'autorisant à ne s'acquitter que des fonctions reliées au poste de pompier proprement dit.

Situation actuelle: Les parties se sont entendues sur une réparation avant l'audition de la plainte par la commission d'enquête. La décision en matière de responsabilité ne seta pas portée en appel.

# Anderson and O'Neill v. The YMCA of Barrie Commission d'enquête – décision rendue le 6 décembre 2000

Selon les plaignantes, Ellen Anderson et Lucia O'Neill, les femmes pouvaient devenir membres en titre du YMCA de Barrie, mais elles ne pouvaient pas acheter la carte de membre privilégié qui est offerte aux hommes. Les hommes qui détiennent une carte de membre privilégié peuvent utiliser un vestiaire qui comporte des installations fermées aux membres ordinaires. Il n'existe pas d'installations semblables pour les femmes.

Décision de la commission d'enquête: La commission d'enquête a jugé que les installations du YMCA de Batrie constituent une atteinte au droit des plaignantes à un traitement égal en matière de services, sans discrimination fondée sur leur sexe. Elle a ordonné que le YMCA de Batrie construise d'ici le le septembre 2001 un vestiaire pour femmes, de même dimension et offtant les mêmes installations que le vestiaire des hommes qui sont membres privilégiés. Situation actuelle: La Commission fait le nécessaire pour s'assuret que le

Situation actuelle : La Commission fait le nécessaire pour s'assurer que le YMCA se conforme à l'ordonnance de la commission d'enquête.

# Jeppesen v. Corporation of the Town of Ancaster et al. Commission d'enquête : décision rendue le 2 février 2001

Le plaignant, Mark Jeppesen, travaillait comme pompier à temps partiel pour les services d'incendie et d'urgence de la ville d'Ancaster depuis janvier 1988. En 1995, son médecin a établi que M. Jeppesen avait perdu la vision centrale à l'œil gauche à cause d'une histoplasmose, une mycose transmise par voie aérogène. En pompiers à temps plein. L'une des exigences de la ville d'Ancaster ont recruté deux pompiers à temps plein. L'une des exigences de l'emploi était de pouvoit conduire une ambulance, ce qui implique d'être titulaire d'un permis de catégorie F.

Ne pouvant pas obtenir le permis exigé à cause de sa déficience visuelle, M. Jeppesen a demandé à son employeur d'adapter ses exigences à sa situation et de l'autoriser à n'effectuer que les fonctions de pompiet, pas de conducteur d'ambulance. Les services d'incendie et d'urgence de la ville d'Ancaster ont rejeté la demande d'adaptation du plaignant et lui ont refusé un emploi à temps plein à cause de son incapacité à obtenir un permis de conduire de catégorie F.

diagnostiqué qu'elle souffrait de dépression réactive et de fatigue chronique. Le 30 juin 1992, Falconbridge a mis fin aux prestations d'invalidité à long terme de Metsala.

Le 26 juin 1992, le médecin de M<sup>me</sup> Metsala lui a délivré un certificat confirmant qu'elle n'était pas capable de reprendre son dernier emploi, mais qu'elle était apre à s'acquirter à mi-temps des fonctions reliées à un emploi de commis moins exigeant. Entre juin 1992 et la fin décembre 1993, Falconbridge a embauché cinq personnes à contrat comme employés de bureau. La personne chargée de superviser les employés de bureau avait estimé qu'aucun des postes à combler ne pouvait convenir à la plaignante, sans la consulter et sans consulter son médecin.

Décision de la commission d'enquête : La commission d'enquête a conclu que Falconbridge avait enfreint le droit de M<sup>me</sup> Metsala à un traitement égal dans le domaine de l'emploi en ne lui offrant aucun des postes de commis qu'il y avait eu à comblet entre juin 1992 et décembre 1993 et en l'obligeant à passet un concours pour le poste qu'elle a finalement obtenu. Elle a conclu que ce traitement inégal constituait une discrimination directe prima facie fondée sur l'existence d'un handicap.

Falconbridge n'a pas renré de cerner la nature exacte des troubles médicaux de Mme Metsala. Sa décision de ne pas lui offrir les postes à contrat était basée sur des idées routes faites concernant les troubles antérieurs de la plaignante. En fait, Falconbridge n'avait aucune raison objective de penser que la plaignante n'était pas apre à s'acquitter des fonctions reliées aux postes qu'il y avait eu à présenté aprende l'exception prévue par le Code. De plus, Falconbridge n'avait présenté aucune preuve à la commission d'enquête à l'appui de son argument que la prise en considération des besoins de Mme Metsala lui causerait un préjudice injustifié. La commission d'enquête a rappelé que l'employeut auquel préjudice injustifié. La commission d'enquête a rappelé que l'employeut auquel il incombe de tenit compte des besoins d'une employée ou d'un employé était tenu de pousser ses efforts d'adaptation plus loin que de simplement examiner si la personne en question était capable de s'acquitter des fonctions reliées à un emploi existant.

Situation actuelle: Falconbridge n'a pas porté la décision de la commission d'enquête en appel. La Commission fait le nécessaire pout s'assurer que la compagnie se conforme à l'ordonnance de la commission d'enquête.

Cette affaire est décrite plus en détail dans le rapport annuel de la Commission ontarienne des droits de la personne de 1998-1999, sous la rubrique Kearney et al. v. Bramalea Limited et al.

Décision de la commission d'enquête: La commission d'enquête a conclu que l'application par les locateurs de ce critère de revenu, constituait prima facie une discrimination indirecte contre les locataires.

La commission d'enquête a par ailleurs conclu que cette règle des 30 pour 100 n'était pas un critère raisonnable, ni un critère appliqué de bonne foi. Elle a ajouté que les locateurs ne subiraient aucun préjudice injustifié s'ils abandonnaient le recours à ce critère pour sélectionner leurs locataires. Les locateurs Shelter Corporation et Creccal Investments Ltd. ont porté la décision de la commission d'enquête en appel devant la Cour divisionnaire.

Décision de la Cour divisionnaire: La Cour divisionnaire a confirmé les conclusions de la commission d'enquête à l'effet que l'application par les locateurs d'un critère de revenu pour sélectionner leurs locataires constituait une violation du Code. La Cour divisionnaire a toutefois modifié l'ordonnance de la commission d'enquête à la lumière de modifications législatives récentes. Elle a pat ailleurs conclu que [TRADUCTION] « les dommages-intérêts généraux envisageables ne sont pas plafonnés ».

Situation actuelle: Les locataires et les locateurs ont demandé une autorisation d'appel, pour des motifs différents. L'audition de leurs motions respectives auta lieu simultanément.

# AUDIENCES DE LA COMMISSION D'ENQUÊTE

Metsala v. Falconbridge Ltd; Kidd Creek Division, B1-0210-99 Commission d'enquête : décision rendue le 15 février 2001

Dawn Metsala a commencé à travailler pour la compagnie Falconbridge Limitée en 1972, comme simple commis. En 1988, elle a été promue au poste de commis à la paye. Début décembre 1989, M<sup>me</sup> Metsala a demandé à être transférée à cause du stress que lui causait son emploi et l'employeur lui a répondu qu'elle devrait attendre qu'une vacance se présente. Le 11 décembre 1989, M<sup>me</sup> Metsala a pris un congé de maladie, suite à quoi son médecin a

A a travaillé pour D Ltd pendant 26 ans sans incident. Juste avant son congédiement, sa fille a déclaré, en sa présence et en présence de sa conjointe, qu'elle s'était souvenue en cours de thérapie que B l'avait sexuellement agressée quand elle était enfant. La conjointe de A et sa fille ont confronté B (frère de la conjointe de A) chez lui. Bien qu'ayant conduit son épouse et sa fille à la maison de B ce soit-là, A n'avait pas participé aux discussions. Le lundi, lorsque A est allé à son travail comme d'habitude, B l'a tenvoyé.

Décision de la commission d'enquête: La commission d'enquête a conclu qu'il était un fait établi que A était capable de séparer sa vie privée de sa vie professionnelle. Elle a par ailleurs conclu qu'au moment de son renvoi, A n'avait explication, A avait été renvoyé en raison des actions de sa conjointe et des accusations portées par sa fille, et que cette situation constituait une discrimination fondée sur l'état familial ou matrimonial.

Décision de la Cour divisionnaire: La Cour divisionnaire a confirmé ces conclusions de fait, mais elle a rejeté la conclusion selon laquelle les faits relevaient d'une discrimination fondée sur l'état familial ou matrimonial, malgré les liens de parenté par alliance entre les parties.

Décision de la Cour d'appel : La Cour d'appel a accueilli l'appel interjeté par la Commission, étant d'accord avec l'argument de celle-ci selon laquelle les motifs illicites de discrimination que sont l'état matrimonial et l'état familial englobent non seulement le fait ou non d'être marié et d'avoir des enfants, mais aussi l'identité des conjoints et des enfants.

Situation actuelle: Les intimés ont formé un pourvoi en appel devant la Cour Suprême du Canada. Les deux parties ont déposé leur preuve et attendent la décision de la Cour.

# COUR DIVISIONNAIRE

# OHRC v. Shelter Corp. Cour divisionnaire - jugement rendu le ler février 2001

Cette affaire porte sur la légitimité du critère de revenu que bon nombre de locateurs appliquent au moment d'évaluer des demandes de location. Ces locateurs demandent aux personnes qui veulent louer un logement de leur dévoiler leur revenu et décident en fonction du rapport entre ce revenu et le loyet d'un logement de leur accorder celui-ci ou non.

tests aléatoires ne sautaient satisfaire aux critères établis dans l'affaire Meiorin à moins que la Pétrolière impériale ne fasse le nécessaire pour tenir compre des besoins des personnes dont les tests seraient positifs, y compris des sanctions moins sévères qu'un congédiement et l'octroi d'un soutien suffisant pour leur permettre de suivre un traitement. Enfin, la Cour a conclu que l'exigence de divulgation d'un problème de consommation abusive d'alcool ou de drogues par le passé était détaisonnable.

Situation actuelle: Cette décision n'a pas été frappée d'appel.

# McKenzie Forest Products Inc. v. Tilberg Cour d'appel de l'Ontario – jugement rendu le 18 avril 2000

L'historique de cette affaire et les faits s'y rapportant ont fait l'objet d'une description détaillée dans le rapport annuel de la Commission ontarienne des droits de la personne de 1999-2000, pp. 21 et 22.

La Commission a renvoyé la plainte de M. Tilbetg devant la commission d'enquête, mais elle s'est retirée de l'affaire après qu'une médiation lui ait permis d'arriver avec McKenzie Forest Products à un règlement des questions d'intérêt public. M. Tilbetg souhaitait toutefois que sa plainte soit entendue par la commission d'enquête. McKenzie a cherché à obtenir le rejet de la plainte, avançant qu'étant donné le retrait de la Commission, la commission d'enquête n'avait plus compétence pour l'entendre.

Décision de la Cour d'appel : La Cour d'appel a conclu que la commission d'enquête pouvait parfaitement entendre la plainte d'un particuliet, même après que la Commission se soit retirée de l'affaire.

Situation actuelle: La décision de la Cour divisionnaire a été annulée et la plainte a été renvoyée de nouveau à la commission d'enquête, en vue d'une poursuite de son audition. La Cour suprême du Canada a rejeté le pourvoi en appel de McKenzie 9 novembre 2000.

# OHRC v. Mr. A, et al Cour d'appel de l'Ontario – jugement re<mark>ndu le</mark> 14 novembre 2000

Le plaignant A était employé de D Ltd. B était vice-président et directeur de D Ltd, superviseur direct et frère de la conjointe de A (autrement dit, beau-frère de A). D Ltd était la propriété de C, qui était lui aussi un frère de A.

handicap et qu'il avait fait l'objet de représailles. discrimination fondée sur l'existence ou plutôt l'existence présumée d'un une plainte auprès de la Commission, soutenant qu'il avait subi une et des contrôles répétés de la part de l'employeur. Il a donc décidé de déposer poste était soumise à des engagements renouvelés de sa part quant à sa sobriété pour la sécurité vers un poste moins intéressant. La réintégration de son ancien d'alcoolisme et de toxicomanie, le plaignant a été muté de son poste critique conformément aux exigences de la nouvelle politique de dépistage des problèmes depuis plusieurs années. Suite à cette divulgation forcée et toujours plaignant à dévoiler un ancien problème d'alcoolisme, qu'il avait surmonté l'alcoolisme et la toxicomanie. Or, l'application de cette politique a obligé le

dépendance à des substances psychoactives. sur l'existence réelle ou présumée d'un handicap envers les personnes ayant une Compagnie pétrolière impériale Ltée constituaient une discrimination fondée importante a été de conclure que les programmes de dépistage utilisés par la entendu la cause en plusieurs fois et rendu plusieurs décisions, dont la plus Décision de la commission d'enquête : La commission d'enquête a

l'affaire Meiorin. Ces trois étapes sont les suivantes: méthode unifiée et en trois étapes établie par la Cour suprême du Canada dans discrimination par suite d'un effet préjudiciable, il convenait d'adopter la Décision de la Cour d'appel : La Cour a conclu que dans les cas de

- rationnellement lié à l'exécution du travail en cause; i) l'employeur doit démontrer qu'il a adopté une norme dans un but
- croyant sincèrement qu'elle était nécessaire pour réaliser ce but ii) l'employeur doit établir qu'il a adopté la norme particulière en
- pour réaliser ce but légitime lié au travail. iii) l'employeur doit établir que la norme est raisonnablement nécessaire légitime lié au travail;

contrainte excessive. mêmes caractéristiques que le demandeur sans que l'employeur subisse une doit démontrer qu'il est impossible de composer avec les employés qui ont les Pour prouver que la norme est raisonnablement nécessaire, l'employeur

d'autres drogues est un handicap et que la politique de dépistage de la La Cour d'appel a également confirmé que la dépendance à l'alcool ou à

facultés des personnes qui y sont soumises. La Cour a par ailleurs conclu que ces ne permettaient pas de mesurer avec exactitude l'éventuelle dégradation des dépistage utilisés par l'employeur étaient aussi contraires au Code du fait qu'ils consommation de telles substances était discriminatoire prima facie. Les tests de

# DIRECTION DES SERVICES JURIDIQUES

En 2000-2001, la Direction des services juridiques a reçu les décisions suivantes : 11 décisions rendues par la commission d'enquête, 12 décisions résultant d'un recours en révision, 9 décisions en appel et six arrêts de la Cour suprême du Canada (cinq pourvois en appel rejetés, un accueilli).

A la fin de l'exercice 2000-2001, la Direction des services juridiques s'occupair des affaires suivantes en cours : 94 plaintes renvoyées à la commission d'enquête, 9 recours en révision, 7 décisions portées en appel et 1 pourvoi devant la Cour suprême du Canada.

Les pages qui suivent présentent les grandes lignes de quelques-unes des affaires et des décisions qui ont marqué l'exercice écoulé.

### 2 1 3 9 9 A

Blencoe c. Colombie-Britannique (Human Rights Commission) Cour suprême du Canada (intervention) – arrêt

Cour suprême du Canada (intervention) – arrêt rendu le 5 octobre 2000

Robin Blencoe, contre qui plusieurs plaintes pour harcèlement sexuel avaient été

déposées en 1995, avait fair valoir avec succès devant la Cour d'appel de Colombie-Britannique que le délai de deux ans dans le traitement de ces plaintes l'avait privé du droit à la sécurité de sa personne que lui garantit l'article 7 de la Cour suprème du Canada a rejeré l'artêt des procédures entamées contre lui. La faveut d'une ordonnance enjoignant à la commission des droits de la personne de Colombie-Britannique de tenit une audience accélérée.

Situation actuelle: La Cour suprême du Canada a annulé le jugement de la Cour d'appel de Colombie-Britannique. Le tribunal des droits de la personne de Colombie-Britannique a procédé à l'audition des plaintes sur le fond.

Entrop v. Imperial Oil Cour d'appel de l'Ontario – jugement rendu le 21 juillet 2000

Le plaignant avait 18 ans d'ancienneté dans la compagnie mise en cause quand celle-ci a décidé d'adoptet une nouvelle politique interne de lutte contre

Business/Les droits de la personne, c'est l'affaire de tout le monde », dans leurs activités d'éducation du public.

# Délégations et visiteurs étrangers

Durant l'exercice écoulé comme les autres années, la Commission a consacré une partie de son temps à la promotion des droits de la personne à l'échelle mondiale. Elle a entres autres accueilli des représentantes et des représentants de divers organismes et groupes œuvrant à la défense des droits de la personne en République de Corée, en Thaïlande, en Chine (province de Jiangsu), au Malawi, en Norvège, en Ouganda et en Irlande du Nord. Le personnel de la Commission a par ailleurs fait des exposés lors de deux conférences internationales, l'une traitant de l'éthique publique et l'autre de droit.

# INITIATIVES CORPORATIVES

Comme le montrent ses résultats pour l'exercice écoulé, la Commission est aujourd'hui mieux placée que jamais pour s'attaquer de front aux difficultés liées à l'exécution de son mandat : son inventaire de dossiers en cours de traitement est limité à des affaires courantes, ses activités d'éducation du public battent tous ses records préalables et plusieurs de ses initiatives retentissantes en matière de politiques ont suscité des réactions très favorables au sein du public et des médias. Ses partenaires tant dans le secteur communautaire que dans le secteur public ont salué et applaudi les progrès réalisés par la Commission en matière d'avancement des droits de la personne.

A l'automne 2000, la Commission a organisé une vaste consultation de son personnel, du personnel de ministères et organismes clés du gouvernement, de même que d'autres intervenantes et intervenants externes, en vue d'arrêtet ses orientations stratégiques pour la période 2001-2003. Ce processus, qui lui a permis d'élucidet ce qui est attendu d'elle, a par ailleurs souligné combien il est nécessaire pour la Commission d'agir, demain comme aujourd'hui, à l'égard d'une vaste gamme de problèmes et d'activités liés aux droits de la personne. Durant la prochaine année, la Commission continuera de mettre en oeuvre les initiatives reliées aux objectifs stratégiques déjà identifiés.

thème: On ne voit bien qu'avec le cœur - Unis contre le racisme, à l'occasion de laquelle celle-ci avait diffusé sur les réseaux de télévision canadiens de courts messages d'utilité publique mettant en scène divers artistes canadiens.

Le dernier rapport annuel de la Commission évoquait une collaboration entre la Commission et le Council of Agencies Serving South Asians portant, entre autres, sur la mise au point d'une version multilingue en langage simple d'unide des parties plaignantes de la Commission. Cette publication est patue durant l'exercice écoulé en six langues sud-asiatiques (hindi, tamoul, punjabi, gujarati, outdu et bengali), de même qu'en anglais et en français.

### INITIATIVES NATIONALES ET INTERNATIONALES

### Observations de la province de l'Ontario

La Commission contribue aux observations formulées par la province de l'Ontario en réponse aux rapports que prépare le Canada pour remplir ses obligations aux termes de conventions internationales. Les commentaires de la Commission mettent en lumière les politiques, activités et programmes législatifs, judiciaires et administratifs pertinents qui ont été appliqués ou qui ont eu lieu au cours de la période visée et qui se rapportent aux articles ont eu lieu au cours de la période visée et qui se rapportent aux articles concernés des conventions. Durant l'exercice écoulé, la Commission a préparé des observations sur les deux rapports suivants :

- le cinquième rapport du Canada sur la Convention sur l'égard des femmes;
- le quatrième rapport du Canada sur le Pacte international relatif aux droits économiques, sociaux et culturels.

## Association canadienne des commissions et conseil des droits de la personne (ACCDP)

Les responsables de l'éducation du public de tous les organismes canadiens des droits de la personne (fédéral, provinciaux et territoriaux) se réunissent régulièrement par téléconférence pour échanger de l'information et planifier pour setivités. C'est au sein de ce réseau que la Commission a pris les devants pour créer une nouvelle affiche, dévoilée lors de la conférence annuelle de l'ACCDP à Banff. Tous les organismes membres de l'ACCDP utilisent désormais cette affiche, qui arbore le slogan « Human Rights are Everyone's

### Partenariats

La Commission a lancé une campagne provinciale, de concert avec une coalition de promotion de l'allaitement, INFACT Canada, et avec le bureau de santé publique de Toronto, afin de souligner le droit fondamental des femmes et des enfants à l'allaitement en public. Cette campagne comportait l'affichage d'une annonce dans les véhicules de transport en commun municipaux dans toute la province et la pose d'une affiche dans les stations de métro les plus fréquentées de Toronto.

L'annonce et l'affiche avaient toutes deux pour but de lutter contre les pratiques discriminatoires dont sont victimes les femmes et leurs nourrissons. Elles contribuaient aussi à l'exécution du mandat de la Commission aux termes du Code en ce qui a trait à la protection des droits des femmes en particulier. Cette campagne s'inscrivait en droite ligne des efforts constants de la Commission visant à protéger les femmes de la discrimination durant la grossesse et durant la période où elles allaitent leurs enfants.



La Commission a formé une alliance très solide avec l'association ontarienne des professionnels en ressources humaines, la Human Resources Professionals Association of Ontario ou HRPAO. Cette alliance ne cesse de croître. En 2000-2001, le personnel de la Commission a animé toute une journée de conférence éducative à l'intention des membres de l'HRPAO sur les droits de la personne au travail, en plus de participer à la conférence annuelle de l'association et de faire un exposé à l'intention des présidentes et présidents de ses différentes divisions lors d'une de leurs réunions provinciales. Par la suite, la Commission a également fait des exposés à divers groupes partainés par les divisions de l'HRPAO à Kingston et à Halton.

La Commission a aussi forgé un nouveau partenariat avec CCH Canadienne Limitée en vue de rééditer l'ouvrage intitulé Politique ontarienne en matière de droits de la personne, le recueil de toutes ses politiques mises à jout, qu'elle continuera d'afficher sur son site Web, à l'adresse www.obrc.on.ca, afin que le grand public puisse continuer d'y avoir accès facilement et sans frais.

Enfin, la Commission s'est lancée dans un projet en collaboration avec la Fondation canadienne des relations raciales et plusieurs autres organismes visant à produire une vidéo et un guide traitant du racisme qui devraient s'avérer de précieux outils de sensibilisation tant dans les écoles que sur les lieux de travail. Ce projet découle d'une campagne antérieure menée par la Fondation, sur le

En 2000-2001, le personnel de la Commission a participé à 103 événements d'éducation du public qui ont touché plus de 9 300 personnes. Toujours soucieuse d'offrit les meilleurs services possibles, la Commission a

décidé d'évaluer la qualité de ses séances d'éducation du public. Ainsi, elle demande dorénavant aux personnes ayant participé à ces séances de cotet, de un à cinq, sur un formulaire d'évaluation type, la compétence des animatrices ou animateurs, la qualité de la documentation employée ou distribuée et l'utilité de l'information présentée. Quatre-vingt pour cent des personnes ayant rempli un tel formulaire jusqu'à date ont attribué une cote générale de quatre ou de cinq aux exposés du personnel de la Commission. La collecte continue de cette information en retout permettra à la Commission d'améliorer la qualité de ses exposés.

En 2000-2001, le commissaire en chef a été invité comme conférencier d'honneur par l'Association pour l'intégration communautaire de l'Ontario, lors de son assemblée générale annuelle, par la maison d'édition Lancaster House Publishing et par les organisateurs de la conférence Diversity Update 2001. Il a aussi maintes fois pris la parole devant des juristes réunis en congrès, devant des étudiantes en droit ou encore devant des jeunes dans les écoles.

### Extension des services

En 2000-2001, la Commission s'est assutée une exposition médiatique lors de plusieurs festivals et foires communautaires, notamment lots du festival multiculturel d'Ajax, de la journée de Toronto PRIDE 2000 festival de fietté des gays ou encore de la foire LE MARCHÉ d'emplois pour les personnes na dispositif portatif sur lequel étaient affichés des renseignements sur les activités de la Commission, distribué des dépliants et répondu aux questions du public. La participation de la Commission à ce type d'activités recueille toujours du des échos très favorables.

Nombre de personnes ayant participé à des activités d'éducation ponctuelles



### Politique sur la mutilation génitale féminine

La mutilation génitale féminine est dénoncée à l'échelle internationale comme atteinte aux droits de la personne, mais aussi comme forme de violence contre les femmes et les jeunes filles et comme pratique présentant des risques certains pour la santé des personnes qui la subissent. En 2000-2001, la Commission a révisé sa Politique sur la mutilation génitale féminine à la lumière de modifications récentes apportées à la Loi sur les services à l'enfance et à la famille. La politique révisée souligne, d'une part, que la loi oblige désormais certaines personnes à rapporter subir des mauvais traitements et, d'autre part, que suite à des modifications apportées au Code criminel, les personnes qui effectuent une mutilation génitale féminine s'exposent à une inculpation pour voies de fait graves.

### ÉDUCATION DU PUBLIC

La Commission s'est dotée d'une stratégie triennale portant sur les activités qu'elle compre entreprendre en matière d'éducation du public durant la période de 2000 à 2003. Cette stratégie, qui vise à renforcer la visibilité et l'efficacité des activités d'éducation du public de la Commission, appuie son mandat aux termes du Code, qui est de promouvoir la compréhension, l'acceptation et le respect des droits de la personne. La Commission a sollicité l'avis de ses partenaires au sein de la collectivité, et notamment les intervenantes et intervenants dans la défense des droits de la personne, avant d'arrêter cette nouvelle stratégie.

L'emploi de campagnes à thèmes comme moyen d'éducation du public est un élément clé de cette stratégie, qui souligne la nécessité d'adopter un plan efficace de renforcement des relations entre la Commission et ses divers groupes d'intervenants, et par laquelle la Commission s'engage d'ailleurs à forger et à renforcet ses partenariats tant dans le secteur des organismes sans but lucratif que dans les secteurs public et privé.

En mars 2001, la Commission a dévoilé son nouveau site Web, à l'adresse www.obrc.on.ca. Ce site, plus accessible et plus facile à consulter qu'auparavant, permet de se renseigner sur le processus de dépôt et de traitement d'une plainte, l'objet et l'issue de certaines plaintes ou encore les politiques et les publications de la Commission.

### Exposés et autres événements

L'exercice écoulé a marqué la sixième année de suire que les événements que la Commission a organisé ou auxquels elle a participé ont attiré une assistance record.

Les trois quarts des plaintes déposées auprès de la Commission ont rapport à l'emploi. Or, il est clair que pour les personnes autochtones, ce n'est pas là que la discrimination les touche le plus sévèrement. Cette différence souligne bien l'importance de l'initiative entreprise par la Commission afin de pouvoir mieux répondre aux besoins particuliers des Ontariennes et des Ontariens autochtones en matière de protection des droits de la personne.

Le racisme, la méfiance générale des institutions non-autochtones à leur égate et le faible taux d'alphabétisme des membres de leurs communautés sont, selon les organisations autochtones consultées, les principaux obstacles à l'utilisation des services de la Commission par les personnes autochtones. S'ajoute à cela le fait que les programmes existants de la Commission ne sont pas bien connus des personnes autochtones et qu'il ne leur est pas facile d'y accéder. Le compte rendu de la première phase de l'initiative s'accompagne d'une série de recommandations quant aux mesures que la Commission peut prendre pour accroître sa présence au sein des communautés autochtones.

### Deuxième phase de l'initiative

Au cours du prochain exercice, la Commission exécutera la seconde phase de cette initiative, qui inclura des ateliers de formation, des programmes d'éducation du public et un programme pilote de sensibilisation à l'échelle communautaire.

### Identité sexuelle

Après avoir publié, en octobre 1999, un document de travail sur l'identité sexuelle, la Commission a mis au point, durant l'exercice écoulé, sa politique officielle concernant les droits des personnes transgenres, autrement dit des personnes qui ne s'identifient pas à leur sexe biologique ou qui rejettent tout ou une partie de l'identité sexuelle qui leur a été attribuée à la naissance.

La Politique sur la discrimination et le harcèlement en raison de l'identité sexuelle fait ressortit les principaux obstacles et problèmes touchant les personnes transgenres dans notre société. Elle confirme par ailleurs que le Code garantit aux personnes transgenres l'égalité des droits, sans discrimination fondée sut le sexe. Cette politique, basée sur des travaux de recherche, des consultations publiques et des entrevues, vise à éliminer les idées préconçues et les mythes à l'origine des pratiques discriminatoires et du harcèlement dont les personnes transgenres sont victimes.

pourtant conçus et exploités pour les personnes handicapées, à cause de la fluctuation de leurs horaires et de leurs critères d'admissibilité restrictifs.

# Sensibilisation des Autochtones aux droits de la personne

En 2000-2001, la Commission a entrepris une initiative primordiale touchant les Autochtones de la province. Jusqu'à présent, rares sont les personnes autochtones qui ont déposé une plainte pour atteinte aux droits de la personne. Cela tient sans doute au fait que les communautés autochtones ne sont guère familières avec le processus de dépôt et de traitement de ce type de plaintes, ni avec les services de la Commission en général ou sa capacité d'intervenit pout leur compte. Parmi les Autochtones qui sont au courant des mécanismes provinciaux de défense des droits de la personne, bon nombre les considèrent peu adaptés à leurs besoins spécifiques.

Cette initiative a pour but de faire connaître les dispositions du Code aux personnes autochtones et de les y sensibiliser davantage, de mettre en place des mécanismes culturellement et autrement adaptés à leurs besoins, de sorte à leur faciliter le recours aux services de la Commission, et enfin d'établit une présence permanente au sein de leurs communautés et de leurs organisations.

Deux organisations autochtones, Grand River Employment and Iraining et Ontario Federation of Indian Friendship Centres, participent à l'élabotation et à la mise en œuvre de cette initiative.

### Première phase de l'initiative

La première phase de l'initiative a pris la forme de consultations avec du'une idée très vague du rôle et des activités de la Commission, voire aucune. Plus de 80 pour 100 de ces organisations ont évoqué le fait que les personnes autochtones vivant hors réserve auxquelles elles ont affaire sont l'objet de pratiques discriminatoires en matière de logement. Plusieurs d'entre elles ont aussi parlé du traitement inégalitaire que subissent les personnes autochtones en matière de services sociaux et de services juridiques. Le taux élevé de discrimination en matière de logement envers les personnes autochtones en services juridiques. Le taux élevé de discrimination en matière de logement envers les personnes autochtones est frappant par rapport à ce que vit le reste de envers les personnes autochtones est frappant par rapport à ce que vit le reste de la population ontarienne.

l'emploi. Elle lancera aussi des consultations sur les droits des personnes handicapées dans le secteur de l'éducation.

## Document de travail sur les services accessibles de transport en commun en Ontario

La Commission a publié un document de travail intitulé Document de travail sur les services accessibles de transport en commun en Ontario. Ce document analyse l'accessibilité des services ontariens de transport en commun et les obligations des fournisseurs de ces services en ce qui a trait aux droits de la personne. L'égalité des droits en matière d'accès aux services de transport en commun est en effet de la plus haute importance. L'impossibilité pour les personnes handicapées, les personnes âgées et les familles ayant de jeunes enfants d'accédet à leur réseau local de transport public les prive essentiellement du droit de participer à la vie de leur collectivité.

Ce document de travail fait suite à une enquête que la Commission avait menée en juillet 1999 sur l'accessibilité des services ontatiens de transport en commun. Cette enquête avait fait ressortit plusieurs lacunes au niveau de l'accessibilité des réseaux de transport public ordinaires, de même que d'importantes variations quant aux services de transport adaptés disponibles dans la province. Dans la région de Totonto, par exemple, de tronçons entiers du réseau local de transport public sont complètement inaccessibles, y compris les tramways du système de transport en commun de la région de Totonto (le des autobus de la Régie des transports en commun de la région de Totonto (le réseau GO) et la plupart des stations de métro. La situation actuelle souligne bien les progrès qu'il reste à accomplir dans ce domaine.

Tout au long du printemps 2001, la Commission a continué à solliciter des observations écrites de particuliers et d'organismes s'intéressant aux points soulevés dans son document de travail. L'analyse de ces observations fera partie des activités de la Commission au couts du prochain exercice.

Compre tenu de sa nouvelle approche des droits des personnes handicapées, la Commission a, durant l'exercice écoulé, saisi la commission d'enquêre de six plaintes portant sur l'inaccessibilité des services de transport en personnes qui, à cause de leur mobilité limitée, ne peuvent pas utiliser les réseaux de transport public ordinaires. Ot, il s'avère que ces personnes ne peuvent pas non plus profiter des services de transport adaptés de leur ville, peuvent pas non plus profiter des services de transport adaptés de leur ville,

## Politique et directives concernant le handicap et l'obligation d'accommodement

Nombreux sont les organismes qui ne saisissent pas l'étendue de leurs obligations aux termes du Code, en particulier en leur qualité d'employeurs. En mars 2000, la Commission a publié un nouveau document intitulé Politique et directives concernant le handicap et l'obligation d'accommodement, qui remplace une série de lignes directrices remontant à 1989. Au moment d'annoncer la sortie de ce document, le commissaire en chef a souligné qu'il incombe à toutes les parties concernées, autrement dit aux employeurs et autres personnes morales comme aux particuliers, d'unir leurs efforts et de faire le nécessaire pour tenir compre des besoins des personnes handicapées.

La politique et les directives révisées établissent un cadre d'action pour la clarification et la promotion des droits des personnes ayant un handicap, de sorte que celles-ci puissent pleinement participer à toutes les activités dans la collectivité comme au travail. L'élaboration de ce nouveau document a suivi des personnes avec plus de 150 intervenantes et intervenants, y compris des personnes handicapées, des groupes de défense de leurs droits, des employeuts, des fournisseurs de services et des associations diverses. Sa version finale est le fruit d'une analyse minutieuse des nombreux mémoires et témoignages recueillis lors de ces consultations en regard des normes établies par la Commission.

Les principaux éléments de la politique et des directives révisées sont les

### suivants:

- l'emphase sur la dignité individuelle et la pleine intégration et participation de toute personne à la vie de la société;
- Participation de concevoir des programmes et des installations qui
- tiennent compte des personnes handicapées;

  la reconnaissance spécifique des droits des personnes qui ont des
- handicaps non apparents, y compris un handicap mental;

  des conseils à l'intention des employeurs et des syndicats, en particulier
  à l'égatd des situations de retout au travail et de l'accès aux emplois de
- remplacement; des attentes élevées en ce qui a trait au respect des exigences du Code des droits de la personne en matière d'obligation d'adaptation et

Au cours de l'exercice à venir, la Commission consultera le public en vue de l'élaboration de guides en langage simple à l'intention des employeurs et des employés portant sur les droits des personnes handicapées dans le domaine de employés

autrement.

Les activités de la Commission touchant les droits des personnes âgées ont suscité beaucoup d'intétêt auprès des médias et du grand public.

### Handicap

En 2000-2001, la Commission a mené de pair plusieurs initiatives portant sur les droits des personnes handicapées. Quarante-huit pour cent des plaintes déposées auprès de la Commission émanent de personnes ayant un handicap. Les études montrent que les personnes handicapées se heurtent toujours et encore à des pratiques discriminatoires très répandues, voire endémiques, qui touchent tous les aspects de leur vie privée.

Durant l'exercice écoulé, la Commission a publié trois documents de base à l'appui de ses efforts pour éliminer la discrimination fondée sur l'existence d'un handicap.

## Politique concernant les tests de dépistage de l'alcool et d'autres drogues

En 2000-2001, la Commission a mis à jour sa Politique concernant les tests de dépistage de l'alcool et d'autres drogues, à la lumière de la décision rendue par la Cour d'appel de l'Ontario dans l'affaire Entrop v. Imperial Oil Ltd. Cette cause en appel portait sur une atteinte aux droits de la personne de par l'instauration par un employeur, Imperial Oil Ltd., d'une politique de dépistage aléatoire de la consommation d'alcool ou d'autres drogues par ses employés. Cette politique exigeait des personnes occupant des postes critiques pour la sécurité de dévoilet tout abus d'alcool ou de drogues présent ou passé.

La nouvelle politique de la Commission reflète les conclusions du tribunal sur plusieurs points, notamment en ce qui a trait à la confirmation que la dépendance vis-à-vis de l'alcool ou d'autres drogues constitue un handicap au sens du Code. Elle énonce par ailleurs de nouvelles lignes directrices relatives aux tests de dépistage de l'alcool ou d'autres drogues, portant sut les tests administrés avant l'embauchage, les tests aléatoires après embauche, le recours à un éthylomètre, l'exigence de divulgation d'abus d'alcool ou d'autres drogues un éthylomètre, l'exigence de divulgation ou le congédiement automatiques de personnes ayant un problème de dépendance vis-à-vis d'une substance psychoactive.

### Discrimination fondée sur l'âge

La Commissaine en chet, il semblerait que dans notre société, la discrimination fondée sur l'âge. Comme on peut le lite dans le message du commissaire en chet, il semblerait que dans notre société, la discrimination fondée sur l'âge soit généralement perçue comme une forme de discrimination moins répréhensible que d'autres, par exemple la discrimination fondée sur le sexe ou la race. Face au vieillissement de notre population, cette perception ne saurait tenit, car tant qu'elle existera, la discrimination fondée sur l'âge touchera de plus en plus de gens. En juillet 2000, la Commission a publié un document de travail intitulé [la] Discrimination et l'âge : problèmes relatifs aux droits de la personne vècus par les personnes àgées en Ontario.

Ce document de travail aborde les tendances et les principaux problèmes relatifs aux droits des personnes âgées, puis recommande différents moyens de promouvoir ces droits. À l'heure actuelle, l'âge est le motif illicite de discrimination cité dans neuf pour cent des plaintes déposées auprès de la l'emploi. Le document de travail évoque entre autres la question de la retraite obligatoire et avance l'idée de protéget le droit à l'égalité en matière d'emploi des personnes désireuses et capables de travailler au-delà de l'âge de 65 ans. La publication de ce document de travail correspond à un engagement pris pat la publication de ce document de travail correspond à un engagement pris pat la publication de ce document de travail correspond à un engagement pris pat la publication de ce document de travail correspond à un engagement pris pat la personnes âgées et d'entamet l'élaboration d'une politique à cet égatd.

Le document de travail a été si bien accueilli que la Commission a décidé de lancer des consultations provinciales sur les atteintes aux droits de la personne dont sont victimes les Ontariennes et les Ontariens d'un certain âge.

Dans le but d'orienter ces consultations, la Commission a au préalable publié un document intitulé Le visuge changeant de l'Ontavio : la discrimination et notre population vieillissante. Ce document présentait une série de questions à propos desquelles la Commission cherchait à sonder l'opinion publique, telles que l'accès aux soins de santé, aux services sociaux ou au logement,

ou encore la protection des droits des travailleuses et travailleurs âgés, et sollicitait des observations écrites des personnes et organismes intéressés. Les séances de consultation proprement dites ont eu lieu à la fin de l'automne à London, Toronto, Ottawa et Sudbury. Elles ont attiré une vaste assistance et permis à la Commission de recueillir de nombreux témoignages sur les difficultés qui confrontent nos aînés dans la vie de tous les jours.



## A PROPOS DE LA COMMISSION

La Commission ontarienne des droits de la personne (la « Commission ») est un organisme indépendant du gouvernement et elle rend compte de ses activités à l'Assemblée législative, par l'intermédiaire du ministre des Affaires civiques. Ses principales fonctions, énoncées dans le Code des droits de la personne (le « Code »), comprennent l'enquête sur les plaintes pour atteinte aux droits de la personne et le règlement de ces plaintes. Selon le Code, la Commission doit en outre promouvoir les droits de la personne et sensibiliser le public à ces droits.

# L'ÉDUCATION DIRECTION DES POLITIQUES ET DE

SENSIBILISATION DE CES DROITS DE LA PERSONNE ET PROMOTION DE CES DROITS

## ÉLABORATION DES POLITIQUES

Fidèle à son mandat, qui est de promouvoir une meilleure compréhension des droits de la personne et de favoriser la recherche visant à éliminer les pratiques discriminatoires, la Commission a entrepris en 2000-2001 un certain nombre d'initiatives axées sur l'élaboration de politiques.

Ainsi, la Commission a organisé des réunions publiques et diffusé, aux médias comme au grand public, des documents de travail sur des problèmes qui se font jour en matière de droits de la personne, elle a publié de nouvelles politiques et en a réédité d'autres, en plus de lancer une importante campagne d'éducation du public.

Les politiques et les lignes directrices de la Commission sont des énoncés officiels qui expliquent la façon dont celle-ci interprète différentes dispositions du Code. Leur but est d'aidet le personnel de la Commission, les autres intervenantes et intervenants dans la défense des droits de la personne et le public en général à comprendre le sens des dispositions du Code et la façon dont elles sont appliquées.

Les paragraphes ci-après résument les faits saillants du dernier exercice.

gros problèmes. La Commission ne partage pas ce sentiment et, compte tenu des témoignages qu'elle a recueillis lors de consultations publiques organisées l'automne dernier, c'est là un sujet qui éclairera dorénavant l'élaboration de ses politiques.

La Commission a par ailleurs forgé de nouveaux liens et renforcé ses partenariats existants, tant au sein du secteur privé que du secteur des organismes sans but lucratif, en vue de la production d'importantes ressources éducatives, y compris un nouveau recueil de ses politiques et une vidéo sur le racisme. Nous sommes également fiers de notre nouvelle collaboration avec les communautés autochtones de l'Ontario visant à davantage sensibiliser leurs membres aux dispositions du Code des droits de la personne de l'Ontario et au rôle de la Commission.

Pour terminer, je tiens à exprimer ma profonde gratitude au personnel de la Commission, dont le dévouement et le dur labeut sont à la clef de toutes nos réalisations de ces dernières années.

Le commissaire en chef,

Keith C. Norton, c.r., B.A., LL.B.

J'ai le plaisir de rendre compte des activités de la Commission ontatienne des droits de la personne dutant l'exercice 2000-2001.

Durant l'exercice écoulé, et pour la cinquième année consécutive, la Commission a fermé plus de dossiers (1 941) qu'elle n'en a ouverts (1 775). Grâce à une efficacité accrue de la gestion des cas, et notamment à la multiplication des médiations volontaires, l'âge moyen des



dossiers en cours de traitement est désormais de 10,4 mois, tandis que leur âge médian n'est plus que de 7 mois.

La réduction de la charge de cas de la Commission a libéré son personnel et lui a permis de se consacrer davantage et avec plus d'enthousiasme à une série de nouveaux programmes et d'initiatives en matière de politiques. En 2000-2001, parallèlement à la publication de sa nouvelle Politique concernant la discrimination liée à la grossesse, la Commission a lancé une vaste campagne d'éducation du public. Les affiches associées à cette campagne soulignaient le droit des femmes, ou plus exactement des bébés, à l'allaitement sur un lieu de travail ou dans tout autre lieu public.

La Commission a publié un nouveau document intitulé Politique et directives concernant le handicap et l'obligation d'accommodement, qui remplace une série de lignes directrices remontant à 1989. Ce nouveau document reflète une réflexion approfondie sur le sujet par des universitaires, des tribunaux et des arbitres de tout le pays. La Commission a également publié:

- une mise à jour de sa Politique concernant les tests de dépistage de l'alcool
- une mise à jour de sa Politique sur la mutilation génitale féminine, sa Politique sur la discrimination et le harcèlement en raison de l'identité
- sexuelle, qui en appelle à la société tout entière de reconnaître les droits des personnes transgenres.

La Commission a suscité beaucoup d'attention parmi les médias et le public en général avec son document de travail intitulé [la] Discrimination et l'âge : problèmes relatifs aux droits de la personne vécus par les personnes âgées en Ontario. D'ici 2021, plus de trois millions d'Ontariennes et d'Ontariens autont plus de 65 ans. Le sentiment dominant est hélas que la discrimination fondée sut l'âge est une moindre forme de discrimination qui ne pose pas vraiment de



Commission ontarienne des droits de la personne Commissaire en chef

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> Ontario Human Rights Commission

Chief Commissioner

180 Dundas Street West Province NV AND SR9 Tet (416) 1914-4541

1002 niu[

Uhonorable Cam Jackson Ministre des Affaires civiques 6<sup>e</sup> étage, 400, avenue University Toronto (Ontario) M7A 2R9

Monsieur le Ministre,

Conformément au paragraphe 31(1) du Code des droits de la personne de l'Ontario, j'ai le plaisir de vous remettre le rapport annuel de la Commission ontarienne des droits de la personne pour l'exercice 2000-2001, en vue de son dépôt à l'Assemblée législative de l'Ontario.

Ce rapport présente les activités de la Commission pour l'exercice se terminant au 31 mars 2001.

Veuillez agréer, Monsieur le Ministre, l'expression de mes meilleurs sentiments.

Le commissaire en chef,

Keith C. Norton, c.r., B.A., LL.B



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Ontario Human Rights Commission Commission ontarienne des droits de la personne

# SO00-5001 RAPPORT ANNUEL

Commission ontarienne des droits de la personne 8e étage, 180 rue Dundas Ouest Toronto, Ontario, M7A 2R9

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Human Rights

Commission

# RAPPORT ANNUEL

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## ANNUAL REPORT

2001-2002





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Ontario Human Rights Commission 180 Dundas Street West, 7th floor Toronto, Ontario, M7A 2R9

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Ontario Human Rights Commission Commission ontarienne des droits de la personne

Chief Commissioner

Commissaire en chef

180 Dundas Street West Toronto ON M7A 2R9 Tel: 416.314.4541 180 rue Dundas ouest Toronto ON M7A 2R9 Tél : 416.314.4541

June, 2002

Honourable Carl DeFaria
Minister of Citizenship and Minister Responsible for Seniors
6<sup>th</sup> Floor, 400 University Avenue
Toronto, Ontario
M7A 2R9

Dear Minister:

Pursuant to Section 31(1) of the Ontario *Human Rights Code*, it is my pleasure to provide to you the Annual Report of the Ontario Human Rights Commission for the fiscal year 2001–2002, for submission to the Legislative Assembly of Ontario.

This report reflects the activities of the Commission from April 1, 2001 to March 31, 2002.

Yours sincerely,

Keith C. Norton, Q.C., B.A., LL.B.

Chief Commissioner

### MESSAGE FROM THE CHIEF COMMISSIONER



I am pleased to report on the work of the Ontario Human Rights Commission for the April 1, 2001 to March 31, 2002 fiscal year.

This year, we celebrate the 40<sup>th</sup> anniversary of the Ontario *Human Rights Code*. In four decades, Ontario has become one of the most diverse communities in the world and gained international renown as a province of tolerance. Sadly, the tragic events of last September 11<sup>th</sup> and ensuing backlash against certain community members underlined the need for constant vigilance. We must

continue to build on the gains we have made over the past few decades in creating an environment of understanding and mutual respect between all communities.

During the weeks that followed, I participated in a number of multi-faith gatherings in Toronto. Those meetings emphasized my deep conviction that we cannot and should not allow such events to influence our behaviour towards our friends, neighbours, classmates or co-workers because of who they are, where they come from, or what faith they observe. In order to move forward, we must seize such moments to continue our important work in advancing and respecting each individual's human rights

I was reminded again that Ontario's greatest qualities are its rich cultural, ethnic and religious diversity and its strong commitment to human rights. In this regard, as in past years, we received a number of delegations from other countries that are looking to the Commission as a model for their own human rights commissions. Respect for human rights is part of the province's cultural foundation and it is encouraging to think that the Commission's work is having a global reach.

This year, the Commission experienced a sharp increase in the number of new complaints filed, most in the area of disability. While there may be a number of explanations for this, including increased public awareness, what is important is that the Commission is working hard to address the situation. We are fortunate to have received an additional \$1M in funding from the Ontario government for 2002-2003.

Finally, I wish to express my gratitude to Commission staff for their hard work in a challenging year and their continuing effort to serve the people of Ontario well.

Keith C. Norton, Q.C., B.A., LL.B.

Chief Commissioner

### ABOUT THE COMMISSION

The Ontario Human Rights Commission (the "Commission") is an arm's length agency of government, accountable to the Legislature of Ontario through the Minister of Citizenship. The Commission's principal functions are set out in the Human Rights Code (the "Code") and include the investigation and settlement of human rights complaints. Under the Code, the Commission's work also includes promoting human rights and public awareness.

# POLICY AND EDUCATION BRANCH PROMOTION AND ADVANCEMENT OF HUMAN RIGHTS

### POLICY DEVELOPMENT

In keeping with its mandate to promote understanding of human rights and to conduct research to eliminate discriminatory practices, the Commission undertook a number of policy development initiatives in 2001-2002. Commission policies and guidelines are approved public statements that set out the Commission's interpretation of specific provisions of the *Code*. The development of policies and guides helps the Commission to advance understanding of the *Code* and inform the public and those involved in human rights work how the Commission will interpret and apply the *Code* when dealing with particular matters. Highlights of the past year are outlined below.

### Age Discrimination

The Commission continued to build on last year's work in the area of age discrimination. In June 2001, the Commission released its Consultation Report, *Time for Action: Advancing Human Rights for Older Ontarians. Time for Action* is the result of extensive research and the Commission's consultation with more than 100 organizations and individuals across the province.

Time for Action reports that a growing and significant proportion of the province's population is facing formidable barriers because of age-based discrimination. The Report highlights the role of ageism in limiting rights and opportunities for older Ontarians. "Ageism" refers to two concepts. First, ageism encompasses myths and stereotypes about older persons that are not based on the actual ageing process but rather society's reaction to older persons. The

second component of ageism is the tendency to structure society based on the assumption that everyone is young. By doing so, the real needs of older persons are not met.



Time for Action identifies four key areas in which older persons are most likely to feel the effects of ageism and to experience age discrimination: employment, health care, housing and transit. The Report also contains the Commission's commitments to do further work in this area as well as recommendations for government and community actions. One such recommendation is that the Ontario Legislature amend the Code to eliminate the blanket defence to mandatory retirement at age 65 and to provide protec-

tion against age discrimination to workers 65 and over. This recommendation has attracted a great deal of public and media attention.

In accordance with the Commission's public commitments, on March 26, 2002, the Commission approved a Policy on age discrimination against older persons. In the next fiscal year, the Commission will release the Policy and launch a public awareness campaign on ageism and age discrimination.

### Insurance

The Commission released *Human Rights Issues in Insurance: Consultation Report* in October 2001. The purpose of the consultation was to promote public awareness, understanding and advancement of human rights in the area of insurance and to examine alternatives to current practices.

The paper is the result of 19 submissions from representatives of the insurance industry, government and consumer groups offering their views on the Commission's 1999 Discussion Paper, *Human Rights Issues in Insurance*. The Commission also initiated two round table discussions – one with insurance representatives from the life/disability sector and the other from the auto/property sector – in the preparation of the Consultation Report.

In the Report, the Commission promotes the principle that the insurance industry should strive to move away from using enumerated *Code* grounds, such as age, sex and marital status, for risk assessment in auto insurance. Industry research to date supports the use of such risk assessment criteria as still reasonably necessary. The industry also maintains that access to information on pre-existing conditions and flexibility in setting risk criteria are important for ensuring affordable products. Consumer representatives raised several concerns including: reasonableness of exclusionary periods and use of genetic information; access to

affordable dispute resolution; lack of full policy disclosure; stringent and sometimes harassing medical reporting and policy discontinuance practices; and, claim-handling variations for so-called "softer" conditions such as mental illness. In the Report's recommendations, the Commission takes the view that genetic testing and related information should not be used to deny insurance because of a disability or risks that might arise in the future.

The Commission is encouraging continued dialogue amongst the insurance industry, consumer groups and governments on human rights issues in insurance.

### An Intersectional Approach to Discrimination

Acknowledging that factors such as race, gender, age, place of origin and disability often intersect to produce unique effects is critical to ensuring that society meaningfully addresses people's experiences of discrimination. Recent Commission policy and research initiatives have recognized that multiple grounds are often intrinsically linked and that discrimination is largely a product of the social construction of identity based on social, historical, political and cultural factors.

Building on the work that the Commission has already done, on March 21, 2002, the International Day for the Elimination of Racial Discrimination, the Commission announced the release of a Discussion Paper, An Intersectional Approach to Discrimination: Addressing Multiple Grounds in Human Rights Claims. The Discussion Paper explores how an intersectional approach applies to human rights claims and is the starting point in a process that will aim to develop some concrete tools for consistently applying an intersectional analysis in all areas of the Commission's daily work.

# Research Paper on Human Rights Commissions and Economic and Social Rights and Proceedings from Policy Dialogue

In 2001-2002, the Commission made public the results of two earlier initiatives to explore ways the Commission can be more responsive to emerging human rights issues and address Ontario's responsibilities under Canada's human rights obligations.

The summary of proceedings from the Commission's Policy Dialogue, *Human Rights Commissions: Future Directions*, was made available on the Commission's Web site in February 2002.

In addition, the Research Paper, *Human Rights Commissions and Economic and Social Rights*, explores ways in which human rights commissions can become more involved in protecting and promoting economic and social rights and in implementing international treaties to which Canada is a party. The Research Paper reflects the research undertaken by Commission staff and is not a formal policy statement. The Paper is available on the Commission's Web site.

## Policy on Discrimination Because of Pregnancy and Breastfeeding

The Commission undertook a revision and expansion of its *Policy on Discrimination because of Pregnancy and Breastfeeding*. This Policy has been in place since 1999 and these latest revisions incorporate changes to the Ontario *Employment Standards Act* that came into effect in September 2001. The revised Policy clarifies the interaction between the *Employment Standards Act* and the *Code*.

The revisions to the Policy also detail rights and responsibilities of all regarding breastfeeding, particularly in employment and in public places, and emphasize that breastfeeding is a health and human rights issue rather than one of public decency. The Policy is intended to provide guidance to employers, landlords, service providers and the general public on the rights of pregnant and nursing women.

# Implementation of the New Policy and Guidelines on Disability and the Duty to Accommodate

The Commission continued to actively implement its *Policy and Guidelines on Disability and the Duty to Accommodate*, released in March 2001. It fulfilled its commitment to consult with stakeholders on the development of plain-language guides on the Policy to assist employers, unions and persons with disabilities in understanding their rights and responsibilities under the *Code*. The Commission held two focus groups to discuss drafts of the guides.

The first focus group included representatives of employee groups, legal clinics, unions, advocacy organizations and disability consumer groups. The second focus group included individual employers and groups that represent employers' interests. The information and feedback will be used in the preparation of the guides.

At the launch of the Policy, Chief Commissioner Keith Norton signalled the Commission's intention to examine the accessibility of the restaurant sector in Ontario. In this fiscal year, the Commission wrote to 29 high-profile restaurants, coffee shops and fast food chains to initiate a survey on the accessibility of their premises and their future plans to achieve accessibility. This initiative is ongoing and further measures are planned for the upcoming fiscal year.

In addition, the Commission has developed a strategy and Consultation Paper for its initiative on disability accommodation in the education sector. Public consultations will be conducted in the next fiscal year with a view to developing a consultation report as well as specific guidelines in this area.

### **Public Transit Accessibility**

The Commission invited written submissions from individuals and organizations regarding the issues raised in its *Discussion Paper on Accessible Transit Services in Ontario*, released in February 2001. Over 30 responses were received from transit providers, seniors' organizations, disability consumer groups, labour organizations, advocacy groups and individuals. The responses detailed concerns in a number of areas: funding for transit services, the setting of standards, transit service providers' roles and responsibilities, and the effect of inaccessible transit services on persons with disabilities, older persons, families with young children and others protected by the *Code*.

Inaccessible public transit services are an important human rights issue because they impose barriers and prevent persons with disabilities, older persons and families with young children, from participating in community life.

A Consultation Report on these submissions will be released early in the 2002-2003 fiscal year.

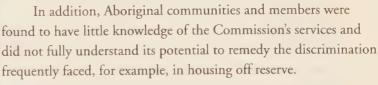
### ABORIGINAL HUMAN RIGHTS PROGRAM

2001-2002 is the second year of the Commission's Aboriginal Human Rights Program. The goals of this important initiative are to create and build on awareness of the *Code* among Aboriginal communities and to enhance their access to the Commission's services. Historically, Aboriginal people in Ontario have filed relatively few human rights complaints and many communities have little knowledge of the provincial human rights process.

The Commission is working in partnership with two Aboriginal organizations, Grand River Employment and Training (GREAT) of Ohsweken (near Brantford) and the Native Canadian Centre of Toronto (NCCT), in the development and delivery of this project.

### Phase I:

The first phase of the initiative involved consultations with 37 Aboriginal organizations across the province. The results of the consultations revealed that Aboriginal people face significant discrimination in housing. Discrimination in employment and services are also experienced but housing was identified as the most pressing concern.



The report on the first phase made several recommendations as to measures the Commission could take to increase its presence in Aboriginal communities. These recommendations included strategies to enhance awareness in the Aboriginal community and improve

access for Aboriginal persons to the human rights system.

### Phase II:

Phase II of the initiative was implemented in the summer of 2001.

A requirement of the project was that it should involve Aboriginal organizations in the delivery of the program. As a result of a rigorous process, the Native Canadian Centre of Toronto (NCCT) was selected to partner with the Commission. NCCT is a Friendship Centre and has existed in Toronto for over 30 years. It describes itself as "a community-based non-profit organization which provides a gathering place to deliver programs and services for Native people while striving to reflect the traditional Native cultural perspective".

A two-day training program for staff of both agencies was held in September 2001. It covered issues of concern in the attainment of equal opportunity for Aboriginal peoples and it informed all participants about the details of the project. It also provided opportunity for staff of the two agencies to get to know one another and to develop a mutual understanding of each other's issues.

A full-time human rights liaison officer began working at NCCT in January 2002. Within only a short time, people from the community began approaching him with questions concerning situations they were experiencing.

GREAT continues to be involved in the project and will be carrying on with Phase III (beginning in 2002-2003) which consists of identifying quality service standards and evaluating the project from both quantitative and qualitative standpoints.

There is a strong commitment among the three agencies to continue the project through the next fiscal year and the Commission looks forward to a beneficial outcome, especially for urban Aboriginal persons living in Toronto.

### AMETHYST AWARD

In January 2002, seven members of the Commission's Policy and Education Branch were awarded the Government of Ontario's Amethyst Award for outstanding achievement by Ontario public servants in the development of the Commission's *Policy and Guidelines on Disability and the Duty to Accommodate.* 



The award recognized the extensive research, public consultations and highly effective public education strategy used by the Branch's staff to create and promote the new disability policy, which set a national standard for persons with disabilities. This is the second Amethyst Award that the Commission has received. In 1998, the Commission was similarly recognized for the development and implementation of its Case Management Information System (CMIS) which has won both national and international acclaim.

### PUBLIC EDUCATION

The fiscal year 2001-2002 is the second year of a three-year Public Education Strategy, *Getting the Message Out*, which governs the Commission's public education activities for the years 2000-2003.

Of particular note, this strategy commits the Commission to develop and enhance partnerships with the public, private and not-for-profit sectors and stresses the need for a plan that will promote effective relations with various stakeholders.

### **Events and Presentations**

For the seventh consecutive year, the high level of performance in public education was maintained. In the fiscal year 2001-2002, approximately 9,000 people attended 104 events where Commission staff were presenting or where display materials were available.

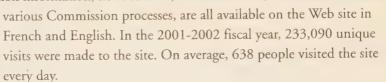
The Chief Commissioner made keynote presentations at conferences and symposia organized by the Ontario Association of Social Workers, Canada's Association for the Fifty-Plus (CARP), Schedule 2 Employers WSIB Conference and the Adult Protective Service Association of Ontario.

He also spoke at conferences, law schools, elementary and secondary schools throughout the province, and gave interviews on radio, television and in the print media on current human rights issues.

In October 2001, the Chief Commissioner made a presentation to the Standing Senate Committee on Human Rights. The Committee was conducting hearings to determine future directions for Canada to meet its national and international obligations. In his address to the Committee, the Chief Commissioner highlighted many of the gains that the Commission has achieved over the past five years and, in particular, how these have contributed to Canada's compliance with international human rights instruments at a national and provincial level.

### **Publications**

The Commission's Web site, www.ohrc.on.ca, is an important tool in sharing documents with the public. All major Commission documents such as policies, consultation information, news releases, case summaries, information on the



Following the events of September 11, the Commission compiled a list of resources and electronic links on its Web site to help students, parents and teachers deal with after-effects of the tragedy.

The Commission released six new leaflets in December 2001 as part of its ongoing mandate to increase awareness of human rights issues. The bilingual leaflets are written in plain language and cover crucial information Ontarians need about their rights with respect to



hiring, sexual harassment, sexual orientation, racial harassment and pregnancy including breastfeeding and one leaflet on the Commission.

The Commission also released an updated edition of *Teaching Human Rights in Ontario*, a package for secondary school teachers to use when explaining human rights issues to students. The new addition includes the 1999 amendment to the *Code*, which added "same sex partnership status" as a protected ground as well as additional case studies and references to helpful Web sites that deal with human rights issues.

Rights Online is an electronic publication posted on the Commission's Web site that highlights the quarterly achievements of the Commission as well as links to other sites and resources on various human rights issues. It also features a Commonly Asked Questions section which addresses how the Code and Commission policies apply in particular situations. The newsletter is also distributed by e-mail or fax to stakeholders and anyone who requests a copy.

## Partnerships and Cooperation

The Commission is part of several partnerships that enhance its efforts to promote understanding of human rights.

The Commission continued to develop its partnership with the Human Resources Professionals Association of Ontario (HRPAO). Commission staff participated in HRPAO's annual conference and made presentations at six other regional HRPAO events.



In partnership with CCH Canadian Ltd., one of Canada's largest and most respected information providers for human resources, legal and accounting professionals, the Commission published *Human Rights Policy in Ontario*, a compendium of the Commission's human rights policies and guidelines. It was released in September 2001 and includes updated policies in the areas of disability, drug and alcohol testing, sexual orientation, pregnancy and gender identity.

The Commission also began a project with the Canadian Race Relations Foundation (CRRF) and a number of other partners to develop a training video and study guide dealing with racism, which will serve as a useful tool in schools, workplaces, communities and organizations (public or private sector). This project was an outgrowth of the CRRF's earlier campaign See People for Who They Really Are: Unite Against Racism which consisted of several

short public service announcements featuring Canadian artists aired on Canadian television networks.

## Advice on Human Rights Matters

The Commission's mandate includes examining statutes, regulations, programs and policies to provide input on human rights aspects, as well as encouraging public and private entities to undertake measures to promote the objects of the *Code*. In this capacity, the Commission provided advice to the provincial government and private sector organizations in a number of areas.

## For example:

- In April 2001, the Commission provided detailed input in response to the Ministry of Labour's consultation on reform of workplace tribunals and agencies.
- The same month, the Commission wrote to the Minister of Transportation pointing out that the vision requirements in the regulations under the *Highway Traffic Act* do not provide for individualized assessment of persons with vision disabilities.
- The Commission wrote to and met with the Ministry of Community and Social Services to provide ongoing comment on the issue of mandatory drug, alcohol and literacy testing of welfare recipients.
- In June 2001, the Commission wrote to the Honourable David Turnbull, Solicitor General, regarding its Policing Standards Manual (2000), Equal Opportunity, Discrimination and Workplace Harassment.
- In September 2001, the Commission wrote to the Minister of Education to request cooperation and offer support in dealing with any harassment or discrimination incidents in the school environments following the tragedy of September 11<sup>th</sup>.
- The Commission responded to reports that a company had an inappropriate drug and alcohol testing policy in place and asked impermissible questions on its application form. As a result of the Commission's intervention, the company changed its policy and procedures to ensure compliance with the *Code* and Commission policies.
- Human rights concerns raised by a legislative amendment allowing for compulsory blood testing for infectious diseases under certain circumstances were the subject of a letter from the Commission to the Minister of Health and Long-Term Care.

• In March 2002, the Commission presented an in-depth submission to the Ministry of Municipal Affairs and Housing, outlining the need for reform to the barrier-free access requirements in the Ontario *Building Code*. The submission describes priorities for change as well as the human rights principles that should be reflected in a revised *Building Code*.

## NATIONAL AND INTERNATIONAL INITIATIVES

#### Ontario Submissions

The Commission provides input into submissions required by Canada's reporting obligations under international human rights conventions as well as other national and international initiatives. In 2001-2002, the Commission provided comment on five documents:

- The United Nations' Draft Optional Protocol to the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment;
- A World Fit for Children Ontario's Submission for Canada's contribution to the UN Special Session on Children slated for May 2002;
- Canada's 5th Report on the United Nations' Convention on the Elimination of All Forms of Discrimination against Women;
- Canada's 13<sup>th</sup> Report on the Convention on the Elimination of All Forms of Racial Discrimination; and,
- Canada's 14<sup>th</sup> Report on the Convention on the Elimination of All Forms of Racial Discrimination.

## Canadian Association of Statutory Human Rights Agencies

Representatives of all the human rights agencies in Canada attend the annual general meeting (AGM) of the Canadian Association of Statutory Human Rights Agencies (CASHRA). At the 2001 AGM, Commission staff were involved in delivering seminars on several human rights topics. The Commission was also integral to the drafting and adoption of two resolutions concerning social and economic rights.

The first resolution articulates CASHRA's recommendation that social condition as a ground of discrimination be included in human rights legislation

across Canada and the second resolution affirms CASHRA's commitment to giving full attention to economic and social rights within existing commission mandates.

Staff representing each of the CASHRA member agencies meet regularly by teleconference to share information and plan new public education and policy projects. With the assistance of the Human Rights Program, Canadian Heritage, the public education group is planning a three-day meeting to further plan educational activities which can be undertaken in partnership.

## International Delegations and Visitors

The Commission's involvement in international human rights continued to play a part in its work last year. It hosted representatives from human rights commissions and related agencies and groups from the following countries: Ethiopia, New Zealand, Ghana, South Africa, Vietnam and Japan.

## LEGAL SERVICES BRANCH

During the 2001-2002 fiscal year, the Legal Services Branch received the following: 6 Board of Inquiry decisions, 30 Board of Inquiry Settlements, 6 judicial review decisions, 10 appeal decisions and one Supreme Court of Canada decision.

At the end of the 2001-2002 fiscal year, the ongoing litigation in the Legal Services Branch comprised of: 87 Board of Inquiry files, 14 judicial reviews, 8 appeals and one case at the Supreme Court of Canada.

The following are highlights of some of the significant decisions and cases over the past year.

## APPEALS

# Ford Motor Co. of Canada v. Ontario (Human Rights Commission), Ontario Court of Appeal Decision: December 14, 2001

The complainant, Mike Naraine, worked for nine years for Ford as an electrician. During that period of time he experienced continuous racial harassment. Mr. Naraine grew increasingly frustrated and compiled a disciplinary record including counts of insubordination. He was discharged from his job in 1985.

**Result at Board of Inquiry:** The Board held that Mr. Naraine's dismissal was improper because Ford had failed to consider the effect the poisoned environment was having on the complainant. Ford appealed the Board decision to the Divisional Court.

Result at Divisional Court: In a unanimous decision the Divisional Court dismissed the appeal. On the issue of delay, the Court noted that the Board was in an "excellent position" to determine whether there would be prejudice to Ford. The Court agreed with the Board's determination that it was appropriate to re-visit the issues addressed by the labour arbitrator in order to make a determination on the human rights issues. The Court held that the Board was entitled to exclude as irrelevant evidence of events subsequent to Mr. Naraine's termination from Ford. The Court upheld the Board's decision that Ford would be held liable for the racial harassment on the basis that it failed to do anything to address the racial slurs and graffiti at its Windsor operations. Ford sought leave to appeal the Divisional Court's decision. Leave was granted on the sole issue of whether the Board erred in ordering Mr. Naraine's reinstatement given the prior arbitral decision upholding his discharge.

Result at the Court of Appeal: The Court found that the Board had jurisdiction to hear and decide Mr. Naraine's human rights complaint and was not bound by the prior decision of the arbitrator upholding the discharge. Though the Court recognized that arbitrators are permitted to interpret and apply "human rights and other employment-related statutes" since the 1992 amendment, this did not make the arbitrator's jurisdiction exclusive or limit the Commission's jurisdiction in any way. In the case of Mr. Naraine, his complaints pre-dated both the 1992 amendments to the *Labour Relations Act* authorizing arbitrators to apply the *Code*, and the amendments to the *Code* authorizing the Commission to defer to another tribunal in its discretion. The current scheme of concurrent jurisdiction was not available to the arbitrator hearing Mr. Naraine's grievance. Thus, Mr. Naraine had no choice but to bring his complaint of *Code* violations to the Commission.

The Court also found that imposing reinstatement could not be upheld in the circumstances of the case. The Court set aside the decision of the Divisional Court with respect to the remedy of reinstatement, and set aside the Board of Inquiry's order reinstating Mr. Naraine. In all other respects, the Board of Inquiry's order was sustained.

**Current Status:** The Commission and the Complainant are seeking leave to appeal to the Supreme Court of Canada on the denial of reinstatement.

# OHRC v. Mr. A and Mr. B, Mr. C and D Ltd. Ontario Court of Appeal Decision: November 14, 2000

Complainant A was an employee of D Ltd. B was vice-president and manager of D Ltd. He was A's direct supervisor, and also A's wife's brother (i.e. A's brotherin-law). D Ltd. was owned by C, who was also a brother of A's wife.

A worked for D Ltd. for 26 years without incident. Just prior to the termination of his employment, his daughter told him and his wife that she had recently uncovered a memory in therapy that B had sexually abused her when she was a child. A's wife and daughter went to confront B (A's wife's brother) at his home. While A had driven his wife and daughter to B's house on that evening, he was not involved in the confrontation. On Monday, A went to work as usual, where B terminated A's employment.

**Result at Board of Inquiry:** The Board of Inquiry found as a fact that A was able to keep his personal and employment situations separate from each other. The Board then concluded that, in the absence of any other explanation, A was

fired because of the actions of his wife and the accusations of his daughter, and that the facts amounted to discrimination based on marital or family status.

**Result at Divisional Court:** The Divisional Court upheld these factual findings but said that, even though the parties were related through marriage, this case does not amount to discrimination on the basis of family or marital status.

**Result on Appeal:** The Court of Appeal allowed the Commission's appeal, agreeing that the grounds "family status" and "marital status" must include the particular identity of one's parent, child or spouse.

**Current status:** The case has been appealed at the Supreme Court of Canada. Both sides have made their arguments and the parties are now awaiting the Court's decision.

## DIVISIONAL COURT

Brillinger and the Canadian Lesbian and Gay Archives v. Imaging Excellence Inc. et al.

Board of Inquiry Decisions: Sept. 29, 1999 and February 24, 2000

The complainant, Ray Brillinger, sought printing services - envelopes, letterhead and business cards - from the respondent Imaging Excellence Inc. for the Canadian Lesbian and Gay Archives (the "Archives"). The president of Imaging Excellence, Scott Brockie, denied this service on the basis of his religious beliefs. Scott Brockie believes that homosexuality is contrary to the teachings of the Christian Bible. Brockie argued that his right to freedom of religion under section 2(a) of the *Canadian Charter of Rights and Freedoms* (the "*Charter*") acts as a defence to the denial of services.

The hearing proceeded in two stages: the first stage dealt with an infringement of the *Code* and the second stage addressed the section 2(a) *Charter* defence.

**Result at Board of Inquiry** (First Stage): The Board held that the Archives is protected under the *Code*. It held that organizations like the Archives are "so imbued with the identity or character of their membership, or so clearly representative of a group that is identified by a prohibited ground under the *Code*, that they cannot be separated from their membership and the organization itself takes on the protected characteristic".

The Board held further that both Ray Brillinger and the Archives were denied printing services contrary to section 1 of the *Code*. It held that Ray Brillinger was discriminated against indirectly as a member of the Archives and its then president, and because of his association with the Archives. The Board held that the Archives was discriminated against directly and by way of association.

Result at Board of Inquiry (Second Stage): The Board ordered the respondents to provide printing services to gays and lesbians and to organizations in existence for their benefit. It accepted the Commission's and the Complainant's concession that such an order contravenes Brockie's religious rights under s. 2(a) of the *Charter*, but held the infringement is reasonably justified under section 1 of the *Charter*.

The Board ordered Brockie and Imaging Excellence to pay general damages in the total amount of \$5,000 to Ray Brillinger and the Archives. It held that an order of this magnitude is necessary to indicate the seriousness of the breach that occurred.

Current status: The decision was appealed by the Respondents to the Divisional Court. The Divisional Court made a preliminary decision that the Board exceeded its jurisdiction by adding the Canadian Lesbian and Gay Archives as a Complainant. However, the Divisional Court ruled that the deletion of the Archives did not dispose of the appeal. Both sides have made their arguments and the parties are now awaiting the Court's decision.

## Service Employees International Union, Local 528 v. Ontario Jockey Club Divisional Court Decision: November 8, 2001

The Ontario Jockey Club and the Service Employees International Union applied for judicial review of conflicting decisions of two arbitrators. The case concerned two employees who suffered the gradual onset of work-related injuries. Their Collective Agreement did not cover such injuries. The employees and the union argued that this constituted discrimination on the prohibited ground of handicap (now disability) under the Ontario *Code*.

The first arbitrator had found that an insurance plan that provides benefits only to employees with "identifiable incident" injuries does not violate the *Code*. The second arbitrator held that employees who were injured gradually experience the same debilitating conditions as employees injured by identifiable incidents, and thus possess the same income replacement needs. The arbitrator

ruled that the insurance plan was discriminatory on the basis of the grievor's handicap (now disability) contrary to subsection 5(1) of the Ontario *Code*.

**Result at Divisional Court:** The Commission intervened on behalf of the Union. The Court delivered a unanimous decision to allow the Union's application to quash the unfavourable decision and to dismiss the Jockey Club's application. The findings of the second arbitrator were upheld.

Current Status: The decision of the Divisional Court was not appealed.

## BOARD OF INQUIRY

Turnbull, Chapman, Fragale, Wong-Ward, Macaulay v. Famous Players Inc., Board of Inquiry Decision: September 10, 2001

The five complainants use wheelchairs and alleged that Famous Players violated the *Code* by failing to provide wheelchair-accessible theatres, by having a policy of non-admittance for patrons in wheelchairs at its inaccessible theatres, and by having a "sign-in" policy for attendants who receive free passes when accompanying persons using wheelchairs.

Result at Board of Inquiry: The Board found that Famous Player's failure to provide accessible facilities constituted a *prima facie* violation of section 1 of the *Code*. The Board found that the defence of undue hardship in making the theatres accessible was not established and thus, failed. In terms of the non-admittance policy, the defence of undue hardship based on health and safety was also dismissed. Conversely, the "sign-in" policy for companions was not found to violate the *Code* because users of free passes are entitled to refuse to give their name and telephone number and still get the pass. The Board also found that other holders of free passes were asked to "sign-in", thus companions of persons in wheelchairs were not singled out by this policy.

As part of the remedy, the Board ordered that Famous Players make the impugned theatres wheelchair-accessible on a phased-in basis. The Board ordered that any film being shown exclusively at an inaccessible theatre must be shown at an accessible theatre at the request of a patron who uses a wheelchair. The Board also ordered that Famous Players review its training program for employees regarding the accommodation of persons with disabilities. The award included damages for the loss arising from the infringement of each of the

Complainants' rights ranging from \$8,000 to \$10,000 and \$2,000 as damages for mental anguish for one of the Complainants as a result of the Respondent's reckless conduct.

Current Status: Certain matters concerning remedy remain before the Board.

## Fuller v. Daoud and Desquilbet Board of Inquiry Decision, August 17, 2001

The Complainant, a Black man, became a tenant of the Respondents, renting out a basement apartment from them in March of 1999.

Shortly after moving in, the Complainant was subjected to unauthorized entries into his apartment, racial harassment and his ceiling (the Respondent's floor) being stomped upon. The Complainant was eventually evicted from the apartment based on false accusations.

Result at Board of Inquiry: The Board of Inquiry found that the Complainant had been harassed and discriminated against because of his race. In calculating the award, the Board adopted a global approach to the assessment of quantum of damages. The Board found that a plain reading of subsection 41(1)(b) of the Ontario *Code* does not impose an upper limit on the monetary compensation the Board may order for loss arising from the infringement of the right to be free from discrimination and harassment. The only limit as imposed by the section is the amount awarded for mental aguish. This sum must not exceed \$10,000 and is granted only if the Board finds that the Respondent has infringed the right in a wilful or reckless manner. The award included damages for the loss arising from the infringement of subsections 2(1) and (2) of the *Code* in the amount of \$15,000 and damages for mental anguish in the amount of \$10,000.

**Current status:** The decision of the Board of Inquiry was not appealed and the Commission is taking steps to ensure compliance with the Board order.

# MEDIATION AND INVESTIGATION BRANCH

## INQUIRY AND INTAKE SERVICES

The Inquiry and Intake Office is the first point of contact for members of the public calling for information on filing a human rights complaint. Through the Inquiry and Intake Office, callers receive basic information on the complaint process, how to file a complaint and other information about the human rights process.

During the fiscal year 2001-2002, the Commission's call centre received a total of 170,145 telephone calls, of which 64,154 opted to speak to an Inquiry Service Representative. Of the 64,154 calls, the inquiry staff spoke to 48,732 callers. On average, calls were responded to within 2.3 minutes (during the first 11 months of the fiscal year 2001-2002). Staff sent out 4,618 intake questionnaires, and received 2,978 completed intake packages in return.

In the fiscal year 2001-2002, 2,438 formal complaints were filed which represents an increase of 663 complaints (or 37%) from 2000/2001.

## MEDIATION SERVICES

Mediation is a formal and voluntary opportunity for parties involved in a complaint to meet and resolve their issues early in the complaint process. The settlement rate at mediation for this fiscal year is 73.6% compared with a 73.2% settlement rate in 2000/2001. In this fiscal year, 1,328 cases were closed in the Mediation Office. This is an increase of 7% over last year.

<sup>1.</sup> The Commission experienced a service disruption when the Ontario Public Service Employees Union went on strike on March 13, 2002. Normal Inquiry and Intake Services were not provided during this period and this statistic is based on the 11 month period from April 1, 2001 to February 28, 2002.

## INVESTIGATION SERVICES

The average age of a complaint from opening until a decision was made was reduced from 15.4 months last year to 12.2 months this fiscal year. The median age of a complaint from opening until a decision was made increased slightly from 7 months last year to 8 months this year.

The increase in the number of complaints filed, and the number of complaints referred to investigation has not, however, significantly affected the age of the Commission's caseload. The average age of the Commission's caseload on March 31, 2002 was 11 months, a minor increase from the average age of 10.4 months in 2000/2001 given the 37 % increase in the number of complaints filed. The median age of the caseload was 8 months compared with 7 months in 2000/2001.

These figures indicate that the Commission is still maintaining a current caseload (one that is 12 months or less), despite a 37% increase in the number of complaints filed with the Commission in fiscal year 2001-2002.

Given the increase in the number of complaints filed, the Commission did not close more cases than were opened for the first time in five years. Nevertheless, the Commission resolved 1,932 cases – close to the same number as last year (1,941). More cases would have been closed this year but for the Ontario Public Service Employees Union strike, which occurred on March 13, 2002, two weeks before the end of the fiscal year – March is, historically, the month in which the Commission closes the largest number of files.

The Commission opened 2,438 cases and closed 1,932 cases in fiscal year 2001-2002. The active caseload, as at March 31, 2002 was 2,300 cases.

The Commission referred 60 human rights complaints to the Board of Inquiry (Human Rights).

## Increase in Complaints Filed

Under Ontario's *Human Rights Code*, the Commission is required to receive all complaints that fall within its jurisdiction. In the fiscal year 2001-2002, 2,438 new complaints were filed at the Commission representing a general rise in complaints across most grounds of discrimination. This amounts to an increase of 663 cases (or 37%) over the total of 1,775 complaints filed in the previous fiscal year 2000-2001. Until this fiscal year, new complaints filed remained

below 2,000 cases per year and averaged at 1,754 cases for the previous five fiscal years.

Because cases can cite more than one ground, a breakdown of total grounds cited across all new cases will provide a better understanding of the increase in complaints filed in 2001-2002. The chart below shows that of the total grounds cited across all complaints filed, the ground of disability increased disproportionately to other grounds from 19.6% of a total of 3,728 grounds cited in 2000-2001 to 26.2% of a total of 4,509 grounds cited in 2001-2002. Looking only at the difference in total grounds cited between these last two fiscal years, by far, the ground of disability accounted for the largest proportion of the increase in grounds cited at 57.7%.

This same upward trend is also reflected in the number of new complaints filed citing the ground of disability rising from 41.2% in 2000-2001 to 48.5% in 2001-2002.

And, this trend does not appear to be unique to Ontario. An informal poll of other human rights commissions in Canada conducted by the Commission in January 2002 revealed that five of the six commissions who had comparable data reported an increase in new cases citing disability.

There has also been a disproportional increase in new complaints filed at the Commission citing the ground of sexual orientation with the number of cases doubling from 50 in 2000-2001 to 100 in 2001-2002.

Although no decisive conclusions can be drawn as to the cause of the overall increase in new complaints filed, or the greater and disproportional increase in complaints citing the grounds disability or sexual orientation, there are a number of factors that may have played a role. Significant events during the fiscal year 2001-2002, such as the Commission's implementation of its new *Policy and Guidelines on Disability and the Duty to Accommodate*, its consultations on transit accessibility and age discrimination, as well as the Ontario Government's enactment of the *Ontarians with Disabilities Act*, all have had an effect in promoting awareness of human rights issues facing persons with disabilities and might account for some of the increase in complaints filed.

Other factors include information dissemination and the Commission's involvement in public education events such as the Human Resources Professionals Association of Ontario's annual and regional conferences.

As well, high profile cases litigated before the Human Rights Board of Inquiry or on appeal to the courts, such as *Turnbull et al v. Famous Players Inc.* 

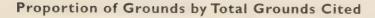
and Brillinger and the Canadian Lesbian and Gay Archives v. Imaging Excellence Inc. et al, have drawn extensive media and general public attention to important issues such as the duty to accommodate persons with disabilities and the rights of individuals to services free of discrimination because of sexual orientation.

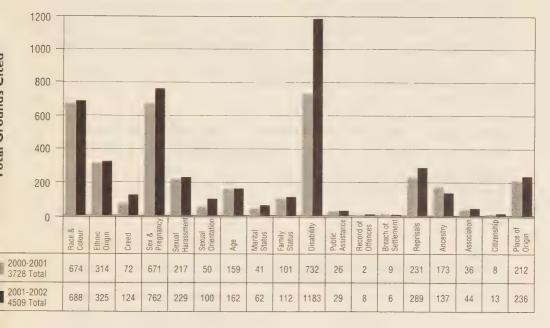
The increase in disability-related complaints may also relate to a broader understanding of what constitutes disability. Recent decisions of the Supreme Court of Canada² have confirmed that "social handicapping", i.e., society's response to a real or perceived disability, should be the focus of the discrimination analysis. Disability must be interpreted to include its subjective component, since discrimination may be based as much on perceptions, myths and stereotypes, as on the existence of actual functional limitations. This approach takes into account evolving biomedical, social and technological developments and includes a dimension that emphasizes human dignity, respect and the right to equality. This broad and liberal interpretation is consistent with the *Code*, which includes past, present and perceived conditions, and is reflected in the Commission's *Policy and Guidelines on Disability and the Duty to Accommodate*.

Public perception and confidence in the Commission's ability and effectiveness in undertaking its mandated functions are also factors that impact on the public's use of the Commission's intake, mediation and investigation services. In addition to these compliance functions, the Commission views the promotion function of its dual mandate, carried out through its inquiry service, research, consultation, policy development, communication and public education activities, to be equally important to the advancement of human rights.

Finally, other institutions have responsibility and play important roles in the protection and promotion of human rights including government, large public service sectors such as health and education, the judiciary, the media, and other civil society and community organizations as well as individuals themselves. Their activity and any particular human rights matters that are at the forefront of public debate will also have bearing on the activity of the Commission.

<sup>2.</sup> Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Montréal (City); Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Boisbriand (City), 2000 SCC 27 (3 May 2000), online: Supreme Court of Canada <a href="http://www.lexum.umontreal.ca/csc-scc/en/index.html">http://www.lexum.umontreal.ca/csc-scc/en/index.html</a>. Granovsky v. Canada (Minister of Employment and Immigration), 2000 SCC 28 (18 May 2000), online: Supreme Court of Canada <a href="http://www.lexum.umontreal.ca/csc-scc/en/index.html">http://www.lexum.umontreal.ca/csc-scc/en/index.html</a>.





## CORPORATE INITIATIVES

On October 31, 2001, Andrea Broadley was appointed Executive Director of the Commission.

The Office of the Executive Director is responsible for directing the business operations of the Commission and acts as the administrative link with the Government through the Ministry of Citizenship's Deputy Minister's Office. One of its key functions is to set the strategic direction of the Commission through the development of long-term goals, annual business plans, approval of budgets and staff objectives.

The strategic planning exercise conducted in the fall of 2000 resulted in the implementation of various initiatives to enhance the services that the Commission provides. In this regard, the Commission implemented the Enhanced Integration Protocol whose primary purpose is to improve the investigative process by making effective use of the skill sets of all areas of the Commission. The Protocol calls for increased professional support from the legal and policy branches for investigations throughout the course of a complaint with the objective of continuing to improve the quality and timeliness in case management.

## ACCOUNTABILITY FRAMEWORK

The Commission has presented an Accountability Framework in each of the last four annual reports. The framework establishes targets for the organization's performance in the coming year and reports on achievements against previously established targets.

The following is a summary of achievements against targets in the 2001-2002 fiscal year.

| SERVICE AREA                  | 2001-2002 COMMITMENTS  | 2001-2002 ACHIEVEMENTS (As of March 31, 2002 unless otherwise indicated)  |
|-------------------------------|--|---|
| Promotion and<br>Awareness of | Conduct one new public awareness campaign.   | Initiated planning of campaign on ageism and age discrimination.  |
| Human Rights                  |  | Established partnerships with community organizations for development and delivery of the campaign.   |
|                               | • Implement Phase II of the Aboriginal initiative.   | Implemented Phase II in partnership with Grand River Employment and Training (GREAT), Ontario Federation of Indian Friendship Centres and the Native Canadian Centre of Toronto (NCCT).                                   |
|                               |  | Conducted two-day training on project for Commission and NCCT staff.  |
|                               |  | Implemented pilot program with GREAT and NCCT: Human Rights Liaison Officer hired to conduct public education and handle public inquiries.  |
|                               |  | Received Summary Report on pilot program from GREAT.  |
|                               | • Enhance accessibility of publications through a new series of 'one-pager' information sheets on all major areas of the <i>Code</i> . | Produced six new one-page plain language bilingual leaflets on: human rights policies on hiring, sexual harassment, sexual orientation, racial harassment, pregnancy (including breastfeeding) and one on the Commission. |
|                               | <ul> <li>Achieve a satisfaction rate of<br/>80% among participants for all<br/>public education activities.</li> </ul>                 | Achieved satisfaction rate of over 80%.   |
|                               | Other significant achievements.  | Published <i>Human Rights Policy in Ontario</i> in partnership with CCH Canadian Ltd.   |
|                               |  | Updated and released revised version of<br>Teaching Human Rights in Ontario.  |

# SERVICE AREA 2001

#### 2001-2002 COMMITMENTS

#### 2001-2002 ACHIEVEMENTS

(As of March 31, 2002 unless otherwise indicated)

**Policy** 

 Release Consultation Report on Age Discrimination. Released Consultation Report, *Time for Action: Advancing Human Rights for Older Ontarians*, on June 26, 2001.

Policy on age discrimination against older persons approved by Commission on March 26, 2002, for release in the next fiscal year.

 Develop workplace guides on disability issues in plain language for both employers and employees and a separate plain-language guide to inform people of their rights and responsibilities. Prepared draft guides and held two focus groups for input: one with employee representatives and one with employer representatives.

• Initiate consultations on disability in the education sector.

Feedback received to be used to further develop the documents.

• Develop Consultation Report on transit accessibility.

Developed Strategy and Consultation Paper in preparation for launch of consultations in next fiscal year.

• Other significant policy achievements.

Consultation Report approved by Commission in March for release early in the 2002-2003 fiscal year.

Released the Human Rights Issues in Insurance: Consultation Report in October 2001.

Updated Policy on Discrimination Because of Pregnancy and Breastfeeding.

Provided ongoing advice to the provincial government and private sector organizations on a number of issues.

 Ensure international obligations are integrated into all new policy work. Integrated international obligations in Commission's work on age discrimination, intersectionality, disability, transit accessibility, social and economic rights, and pregnancy and breastfeeding.

Provided input on Canada's reports under international instruments.

Undertook or participated in initiatives to explore how commissions can help Canada meet its international obligations, *e.g.* posting of Research Paper and Policy Dialogue proceedings on Web site, presentation to Standing Senate Committee on Human Rights, drafting and adoption of CASHRA resolutions on economic and social rights.

| SERVICE AREA                               | 2001-2002 COMMITMENTS   | 2001-2002 ACHIEVEMENTS (As of March 31, 2002 unless otherwise indicated)   |
|--|---|--|
| Inquiry<br>and Intake<br>Services          | <ul> <li>Average response time on calls<br/>handled by inquiry service<br/>representatives will be within<br/>2.5 minutes.</li> </ul> | Average response time was 2.3 minutes (during the 11-month period prior to the Ontario Public Service Employees Union strike).                                   |
|  | • Draft complaints within 15-20 days.   | Average time to draft a complaint was 14 days. This achievement was met at a level below the objective.  |
| Mediation and<br>Investigation<br>Services | <ul> <li>Achieve at least a 65% settle-<br/>ment rate in cases in which<br/>mediation has been attempted.</li> </ul>                  | Settlement rate of 73.6% in cases in which mediation was attempted. This is comparable to last year's rate of 73.2%.   |
|  | • Once parties have agreed to mediation, the mediation will be completed within 3 to 6 months.  | The average age of 1,328 cases closed by mediation was 4.1 months.   |
|  | • The average time required to resolve a complaint, from filing to closing, will be reduced from 15.4 months to less than 14 months.  | The average age of a complaint from opening until a decision was made was reduced from 15.4 months last year to 12.2 months this fiscal year.                    |
| Corporate<br>Initiatives                   | <ul> <li>Begin implementation of<br/>corporate strategic plan<br/>2001-2003.</li> </ul>   | Implemented Enhanced Integration<br>Protocol and improved the investi-<br>gative process by utilizing legal and<br>policy staff input throughout the<br>process. |

The following are the Commission's public commitments for the 2002-2003 fiscal year.

| SERVICE AREA                  | 2002-2003 COMMITMENTS   |
|-------------------------------|---|
| Promotion and<br>Awareness of | • In partnership, implement ageism and age discrimination public awareness campaign and related public education activities.  |
| Human Rights                  | • Implement Phase III of Aboriginal Human Rights Initiative.  |
|                               | <ul> <li>Achieve a satisfaction rate of 80+% among participants for all evaluated<br/>public education.</li> </ul>  |
|                               | • Teaching Human Rights in Ontario: Make additional resources available to teachers on the Commission's Web site.   |
| Policy                        | • Release the Policy on age discrimination against older persons.   |
|                               | • Release Discussion Paper, An Intersectional Approach to Discrimination: Addressing Multiple Grounds in Human Rights Claims, and solicit feedback from stakeholders. |
|                               | <ul> <li>Conduct consultations on disability in the education sector with a view<br/>to developing a consultation report and specific guidelines.</li> </ul>          |
|                               | Release the Consultation Report on transit accessibility.   |
|                               | <ul> <li>Publish plain-language workplace guides on disability issues.</li> </ul>   |
|                               | <ul> <li>Undertake further work to promote accessibility among service<br/>providers in Ontario.</li> </ul>   |
|                               | Initiate project on race, ethnicity and origin.   |
|                               | <ul> <li>Develop tools to help employers implement human rights policies and<br/>procedures in workplaces.</li> </ul>   |
|                               | • Ensure international obligations are integrated into all new policy work.   |
|                               | Monitor relevant United Nations Conventions and Human Rights     Decisions.   |
| Inquiry and Intake Services   | Average response time on calls handled by Inquiry Service     Representative will be within 2.3 minutes.  |
|                               | Draft complaints within 14 - 18 days.   |
| Mediation and Investigation   | • Achieve at least a 65% settlement rate in cases in which mediation has been attempted.  |
| Services                      | <ul> <li>Once parties have agreed to mediation, the mediation will be completed<br/>within 3 - 6 months.</li> </ul>   |
|                               | <ul> <li>The average time required to resolve a complaint, from filing to closing,<br/>will be less than 14 months.</li> </ul>  |
| Corporate<br>Initiatives      | Continue to implement the corporate strategic plan 2001-2003.   |

## APPENDICES

## LIST OF COMMISSIONERS



KEITH C. NORTON, Q.C., B.A., LL.B. Chief Commissioner

Keith Norton was appointed Chief Commissioner of the Commission on July 18, 1996. He is an educator and a lawyer by training, having studied law at Queen's University in Kingston, as well as having received a diploma in education from the Ontario College of Education. He practiced criminal and family law in Kingston, Ontario, and taught at the secondary and

post-secondary levels.

Mr. Norton is a former Minister of Community and Social Services and served as Parliamentary Assistant to the Treasurer of Ontario and Minister of Economics and Intergovernmental Affairs. He has also served as Minister of Health, Minister of Education and Minister of Colleges and Universities.

As Minister of the Environment between 1981 and 1983, Mr. Norton became the first Canadian cabinet minister to testify before a Committee of the United States Senate. Throughout his career, Mr. Norton has championed issues related to persons with disabilities, senior citizens and the disadvantaged. He has also been involved in a number of business ventures.

Mr. Norton is a former President of the Canadian Human Rights Tribunal.



#### CHERYL BLONDELL

Cheryl Blondell was appointed to the Commission in February 1997. She is an Assistant Crown Attorney in the Ministry of the Attorney General. She formerly served as Criminal Duty Counsel with the Ontario Legal Aid Plan, where she advised and represented accused persons. Ms. Blondell worked for the Commission in the summer of 1989 as part of the team that created the Systemic Investigations Unit.



#### PETER LI

Peter Li is the General Manager of Sing Tao Daily News, Eastern Edition. Mr. Li was appointed to the Commission in September 1997. He is a member of the Chinese Canadian Development Committee of the Hospital for Sick Children Foundation and sits on the Asian Business Committee of Metro Toronto and York Region's Junior Achievement. Mr. Li was a member of Canada Trust's Asian Advisory Council. He has also served as a Director of

the Chinese Information and Community Services and was a past Vice-President of the Chinese Canadian Advertising, Media and Marketing Association. Mr. Li is a former General Manager of Hotel Victoria and Project Administrator of the Chinatown Centre.



#### The Revd Fr. WILLIAM G. CLIFF

Fr. Cliff was appointed to the Commission in February 1997. He is the Rector of the Collegiate Chapel St. John the Evangelist at Huron University College and Anglican Chaplain to the University of Western Ontario in the Diocese of Huron. He is a former member of the University of Western Ontario Senate, a former Padre with the Royal Canadian Legion and Police Chaplain holding the rank of Honourary Inspector, and a Fellow of the

National College of Music (U.K.) An active singer and performer, Fr. Cliff, with three other colleagues have sung in numerous concerts and released 3 recordings to raise money for the relief of hunger. To that end, he has been made an honourary life member of the Primate's World Relief and Development Fund; the international development fund of the Anglican Church of Canada, for services to the fund. Trained at the University of Western Ontario Faculty of Music, King's College and Huron University College, Fr. Cliff has served parishes in London, Simcoe, Hanover, Durham, Strathroy, and Adelaide, Ontario.



#### RICHARD MILES

Before his appointment to the Commission in July 1992, Richard Miles held senior administrative positions with the Ministry of Community and Social Services, the Federal Secretariat for Disabled Persons Office, and the Handicapped Action Group Incorporated in Thunder Bay. Mr. Miles was appointed by the Minister of Citizenship, Culture & Recreation to the task force, which conducted a procedural review of the Ontario Human Rights Commission.



#### MARNIE PAIKIN, CM

Marnie Paikin was appointed to the Commission in September 1996. She is a past President of the Canadian Council of Christians and Jews, and a recipient of the Province of Ontario's "Outstanding Woman Award" and of the Human Relations Award of the Canadian Council of Christians and Jews. She has been inducted into the Hamilton Gallery of Distinction and has been appointed a Member of the Order of Canada. Ms. Paikin is currently a

Director of Atomic Energy of Canada Ltd. and of Westcoast Energy Inc.



#### **NALIN KANUCK**

Nalin Kanuck was appointed to the Commission in September 1997. He is a Management and Financial Consultant. He is also an advisor on Race Relations to the York Region Board of Education. Mr. Kanuck is a former Justice of the Peace in Sri Lanka, a position that required him, among other judicial functions, to investigate human rights violations. He was also Chairman and Managing Director of the Regional Development Board in the

Ministry of Regional Development in Sri Lanka. He also functioned as a Director of the National Youth Service Council in Sri Lanka's Prime Minister's Office. Mr. Kanuck has a Bachelor of Applied Arts in Public Administration from Ryerson University, Toronto, a Bachelor of Arts Degree from the University of Ceylon and an Executive Diploma in Public Administration from the University of Colombo, Sri Lanka. The City University of California also awarded him an Honourary Doctorate Degree in Public Administration. He is a graduate of the Canadian Institute of Certified Administrative Managers and a Fellow of the British Institute of Management, England.



## MICHEL LALONDE

Michel Lalonde is Reeve of the East Hawkesbury municipal council, having served over the last 20 years as Councillor and as Deputy Reeve. He was appointed to the Commission in December 1997. In 1993, Mr. Lalonde served as Warden of the Council for the United Counties of Prescott and Russell. He was subsequently elected to the Council's executive, planning and public works committees. He received the Award of Merit for the County of

Prescott for the year 1985 and also served as President of the Prescott Mutual Insurance Board and of the Hawkesbury and District General Hospital Board. A farmer by occupation, Mr. Lalonde is an active participant in the local farming community. He served from 1989 to 1996 on the board of directors of the Glengarry, Prescott and Russell Local Agricultural Employment Board and as President of the Prescott Peer Review Committee for Environmental Farm Plan from 1993 to 1997.



#### CLAUDETTE ROBINSON

Claudette Robinson was appointed to the Commission in March 1998. She studied at the University of Ottawa and McMaster University. Ms. Robinson is the French Coordinator at Sheridan College and a language consultant for corporate clients. She has co-authored a series of French readers for elementary and secondary schools. She was the author and co-author of three national French television series for TVO educational programs one of which she

hosted. She has been consultant for the Halton Board of Education, has taught at the University of Ottawa summer school and has been Principal of the Teaching French as a Second Language course for the Ministry of Education.



#### ABDUL HAI PATEL

Abdul Hai Patel was appointed to the Commission in April 1999. Mr. Patel received his primary education in India, secondary education in Barbados and post-secondary education at York University.

Mr. Patel is a recipient of the Canada 125 commemorative medal from the Governor General for Community Service. He is a recipient of the Volunteer Service Award from the Ministry of Citizenship, Culture and

Recreation, a member of the South & West Asian consultative committee of the Toronto Police, and a coordinator of the Islamic Coordinating Council of Imams-Canada. Mr. Patel is also the Vice-Chair of the Association of Employees for Employment Equity with New Horizon Solutions Inc., a division of Ontario Power Generation Company and serves as a member of the Provincial Committee of Power Workers Union on Employment Equity and Diversity.



## CHRISTIANE RABIER

Christiane Rabier was appointed to the Commission in April 1999. Ms. Rabier received her PhD from the University of Nice-Sophia-Antipolis; she received her Masters from the University of Montreal and studied public law at the University of Montpellier in France. She is currently Chair of the Department of Political Science and Vice-Dean of Social Sciences and Humanities at Laurentian University in Sudbury.

Ms. Rabier is active within the francophone community in Sudbury and has worked on a program for francophone women to attend post secondary studies, as well as served as a consultant with TV Ontario on Continuing Education. She also served as a volunteer with Canada's Special Olympics in 1998 and Operation Red Nose in 1999.



## JUDITH-ANN MANNING

Judith Ann-Manning was appointed to the Commission in February 2000. Ms. Manning is an Accessible Services Planner/Barrier-Free Consultant. She majored in Criminology and Law at the University of Toronto. She currently is the Co-ordinator of the University of Toronto's Wheelchair Access Committee and has held the position of Chair of the North York Advisory Committee For Persons With Disabilities, co-Chair of the Board of Directors

of the Centre for Equality Rights in Accommodation, and vice-Chair of the Toronto Transit Commission's Advisory Committee on Accessible Transportation. Ms. Manning also volunteers at the Sunnybrook Health Science Centre in the annual Run for Research.



#### MAE RADFORD

Mae Radford was appointed to the Commission in April 1999. Ms. Radford received a diploma in nursing from the Toronto Western Hospital and a Bachelor of Arts in health administration from York University. She is currently the manager of volunteer services, overseeing operations of a team of 1700 volunteers who deliver friendly visiting, palliative care volunteer visiting, transportation, and Meals on Wheels for the VON Hamilton-Wentworth.

Ms. Radford is a member of the Coalition of Community Health and Support Services, which advocates for community-based health care. She is a member of the Ontario Community Support Association and the Chair of District B. Ms. Radford is the vice-chair of the Citizen Committee for Violence Against Women for the City of Burlington.

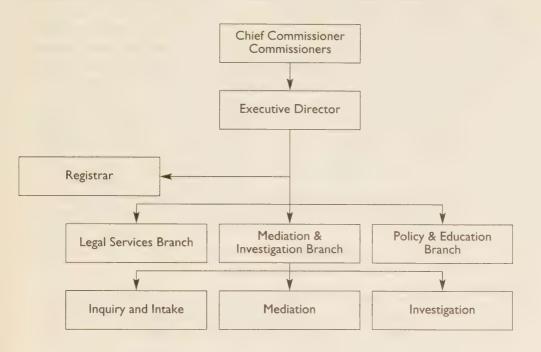


## RICHARD THÉBERGE

Richard Théberge was appointed to the Commission in February 2002. He is a lawyer, policy analyst and communications consultant. He has held senior posts in the federal government analyzing and developing policies in connection with business and corporate law. He has volunteered with many organizations that work with the youth and disability communities. He has been recognized as a patron of deaf youth by the Jules Leger Centre in

Ottawa, Ontario, as well as awarded a lifetime honourary membership in the Canadian Council of Independent Laboratories for his years of work on behalf of the independent testing industry.

## ORGANIZATIONAL CHART



## BRANCH DESCRIPTIONS

#### Office of the Chief Commissioner

The Office of the Chief Commissioner provides leadership and guides the Commission in carrying out its statutory functions in a way that ensures that, at both the government and community levels, human rights are protected in the province. The Chief Commissioner and Commissioners set policy direction and make decisions about complaints relating to the *Code*.

#### Office of the Executive Director

The Office of the Executive Director provides leadership and direction to senior management staff of the Commission in carrying out its statutory mandate; directs the development and implementation of corporate and operational plans; and leads the planning and implementation of ongoing organizational improvement initiatives within the Commission. The Registrar's Office, attached to the Office of the Executive Director, is responsible for processing Reconsideration requests, co-ordinating all functions related to Commission and Panel Meetings, and Freedom of Information and Ombudsman issues.

## Mediation and Investigation Branch

The Mediation and Investigation Branch handles all the enforcement functions of the Ontario Human Rights Commission through a network of offices across the province.

The public's first contact with the Commission is through the centralized Inquiry and Intake Unit. This office handles all inquiries and drafts complaints from across the province. The Mediation Office provides mediation services as well as processing Section 34 requests which gives the Commission discretion not to deal with a complaint, if it could have been resolved elsewhere, is filed in bad faith, is out of time or is outside the Commission's legal authority. The Investigation Office undertakes investigation and conciliation of complaints.

The Branch also develops multi-year strategies to effectively manage the Commission's caseload and procedures for the mediation and investigation of complaints. In addition, the Branch assists in carrying out the Commission's public education mandate.

## Policy and Education Branch

The Policy and Education Branch provides leadership and direction for the promotion and advancement of human rights and supports the enforcement of the *Code*.

The Branch ensures the promotion of human rights through compliance with the *Code* and with international human rights obligations. This includes the development of public policy statements, formal guidelines and research on a broad range of human rights and social justice issues. The Branch is responsible for national and international liaison, issues management, media and stakeholder relations, the Web site and publications. It also conducts public consultations and focus groups and represents the Commission on intergovernmental task forces and delegations.

The Branch is responsible for the strategic planning function for public education and communications at a corporate level and for implementing a wide range of educational programs and partnership initiatives, such as public awareness campaigns, presentations, workshops and conferences. The Branch also provides communications and policy support to the Offices of the Chief Commissioner and the Executive Director.

## Legal Services Branch

The Legal Services Branch assists the Commission in fulfilling all aspects of its mandate, including compliance, public education and litigation. Its activities include providing legal advice to senior management, Mediation and Investigation managers and officers concerning investigation and conciliation of cases, providing legal opinions requested by the Commission, and serving as legal counsel to the Commission before the Board of Inquiry and the courts (on matters of judicial review and appeals).

## LIST OF PUBLICATIONS

| Plain Language Documents  | Publications<br>Ontario | Web<br>Site  |
|---|-------------------------|--------------|
|   | Ontario                 | Site         |
| Female Genital Mutilation: Questions and Answers                        |                         | ,            |
| (available in English/French, Arabic/Somali, Swahili/Amharic) (8/99)    | -1                      | V            |
| Guide to the Human Rights Code (5/99)                                   | V                       | V            |
| Guide to Mediation Services (5/97)                                      | .1                      | V            |
| Hiring (11/01)  | V                       | V            |
| Hiring? A Human Rights Guide (9/99)                                     | -1                      | V            |
| Human Rights at Work (9/99)   | V                       | V            |
| Human Rights in Ontario (available in English/French; Bengali/Urdu;     | 1                       |              |
| Hindi/Punjabi; Gujarati/Tamil) (7/00)                                   | √                       | 1            |
| If You Have a Human Rights Complaint – A Complainant's Guide (5/97)     |                         | V            |
| If You Receive a Human Rights Complaint – A Respondent's Guide (5/97)   | 7)                      | V            |
| Pregnancy and Breastfeeding (11/01)                                     | V                       | V            |
| Pregnancy – Before, During and After: Know Your Rights (5/99)           | V                       | √,           |
| Protecting Religious Rights (1/00)                                      | V                       | √,           |
| Racial Harassment (11/01)   | $\sqrt{}$               | √.           |
| Racial Slurs and Harassment and Racial Jokes (6/96)                     |                         | V            |
| Role of the Commission: What you need to know (11/01)                   | $\sqrt{}$               | V            |
| Sexual Harassment(11/01)  | $\sqrt{}$               | V            |
| Sexual Harassment and Other Comments or Actions About a Person's Sex    | (11/96)                 | $\sqrt{}$    |
| Sexual Orientation (11/01)  | $\sqrt{}$               | $\sqrt{}$    |
| Policies and Guidelines   |                         |              |
| Guidelines on Special Programs (11/97)                                  |                         | $\checkmark$ |
| Policy and Guidelines on Disability and the Duty to Accommodate (11/0   | 0)                      | $\checkmark$ |
| Policy on Creed and The Accommodation of Religious Observances (10/9    |                         | $\checkmark$ |
| Policy on Discrimination and Harassment Because of Gender Identity (3/  |                         | $\sqrt{}$    |
| Policy on Discrimination and Harassment Because of Sexual Orientation   |                         | $\sqrt{}$    |
| Policy on Discrimination and Language (6/96)                            |                         | $\sqrt{}$    |
| Policy on Discrimination Because of Pregnancy (5/99)                    |                         | $\checkmark$ |
| Policy on Drug and Alcohol Testing (9/00)                               |                         | $\sqrt{}$    |
| Policy on Employment-Related Medical Information (6/96)                 |                         | $\sqrt{}$    |
| Policy on Female Genital Mutilation (FGM) (11/00)                       |                         |              |
| Policy on Height and Weight Requirements (6/96)                         | V                       |              |
| Policy on HIV/AIDS Related Discrimination (11/96)                       |                         | $\sqrt{}$    |
| Policy on Racial Slurs & Harassment & Racial Jokes (6/96)               |                         | V            |
| Policy on Requiring a Driver's Licence as a Condition of Employment (6/ | 96)                     | V            |
| Policy on Scholarships and Awards (7/97)                                |                         | V            |
| Policy on Sexual Harassment & Inappropriate Gender-Related Comments     |                         | ٧            |
|   |                         | $\sqrt{}$    |
| and Conduct (9/96)  |                         | Ą            |

|   | Publications            | Web       |
|---|-------------------------|-----------|
|   | Ontario                 | Site      |
| Other Publications  |                         |           |
| Annual Report   | $\checkmark$            | $\sqrt{}$ |
| Developing Procedures to Resolve Human Rights Complaints  |                         |           |
| Within your Organization (6/96)                           |                         |           |
| Human Rights Code   | $\sqrt{}$               | $\sqrt{}$ |
| Human Rights Code Card (11" x 17")                        | Contact the Commissio   | n         |
| Mediation Services Participant Satisfaction Report (9/99) | Contact the Commissio   | n         |
| Human Rights Policy in Ontario (2001)                     | Contact CCH Canadian    | n Ltd.    |
|   | 90 Sheppard Avenue Ea   | st        |
|   | Suite 300               |           |
|   | Toronto, ON M2N 6X      | 1         |
|   | Toll Free: 1-800-268-45 | 522       |
|   | E-mail: cservice@cch.ca |           |
|   |                         |           |

## LIST OF PUBLIC EDUCATION ACTIVITIES

## **Aboriginal**

Ontario Federation of Indian Friendship Centres

## **Business/Legal**

Akzo Nobel Coatings Ltd.

Bancroft Institute

Canadian Association of Pre-Retirement

Casino Niagara

Centre for Labour-Management Development

Hicks Morley (3)

Human Resources Professionals Association of Ontario (HRPAO)

- Brantford
- Guelph and District
- Halton
- North Bay Chapter
- Northwestern Ontario
- Quinte Chapter
- Toronto (HRPAO Annual Conference 2002)

Huronia Bed and Breakfast Association

INFONEX - conference

Lancaster House & U of T Industrial Relations

– conference

Law Society of Upper Canada

Matrix Logistics Services Limited

Metropolitan Toronto Lawyers' Assoc.

Osgoode Hall Law School, Community and Legal Aid Services Programme

Rapistan Systems Ltd.

slmsoft.com Inc.

Spherion Workforce Architects

The Canadian Institute (2)

TSC Stores Ltd.

## Community

Adult Protective Service Association of Ontario (APSAO)

Ajax Baha'i Community

Beatrice House

Canadian Association of Community Living (3)

Canadian Association of Retired Persons

Canadian Hearing Society

Chinese Lingual-Cultural Centre of Canada

City of Kitchener Race Relations Committee

COSTI Immigrant Services (2)

Future Abilities and Creative Employment (FACE)

Independent Living Centre London & Area

Les Amis Francophiles du Niagara

London Area Mediators' Association

Markham Race Relations Committee

Ontario Gerontology Association

Parkdale Intercultural Association - Job Fair

Peel Region Islamic Circle of North America

Pride 2001

Toronto Theatre Alliance

Victim-less 2001 Conference (Halton Regional Police Services)

Volunteer Centre of Toronto Ready and ABLE Conference

Wabano Centre for Aboriginal Health

Warden Woods Community Centre

Wood Green Community Centre

YMCA – Employment Services Information

Warehouse

## LIST OF PUBLIC EDUCATION ACTIVITIES

#### Education

Bear Creek Secondary School

Canadore College - North Bay (2)

Collège des Grands Lacs

Dufferin-Peel Catholic District School Board

George Brown College: Human Resources Programme (2)

Georgian College – Human Resources Management

La Cité collégiale

Laurentian University (2)

McMaster University

Nantyr Shores Secondary School

Niagara College

Ontario Business Educators Association

Queen's University – School of Policy Studies – MPA Programme

Ryerson Polytechnic University – School of Disability Studies

Sheridan College

University of Waterloo

Wilfrid Laurier University – Special Needs Office

York University Faculty of Education

York University - Labour Studies Programme

### International

Ethiopian Delegation

Human Rights Forum 21 (Japan)

Kylie Clode, Policy Manager, New Zealand Disability Strategy, Disability Issues Directorate, Ministry of Health

Mr. Seth Obo – Commission on Human Rights and Administrative Justice, Ghana

Mr. Ashraf Mohomad – Legal Resources Centre, South Africa Michael Powles - New Zealand Human Rights Commission

Parliamentary Centre – Asia Programme (8 delegates from Vietnam)

Paul Rishworth-University of Auckland (New Zealand)

#### Public Sector

British Columbia Human Rights Commission

Canadian Human Rights Commission – Policy Branch

City of Hamilton – Social & Public Health Services

City of Toronto - Access & Equity Unit

Employment Resource Managers' Network

Employment Standards Intake Centre, Ministry of Labour

Ministry of Labour

Ministry of Natural Resources

Mount Sinai Hospital

Municipal WSIB Users Group

New Brunswick / Nova Scotia Human Rights Commissions

Ombudsman Ontario

Ontario Association of Social Workers

Ontario College of Teachers

Ontario Multifaith Council

Ontario Non-Profit Housing Association

Schedule 2 Employers' / WSIB Conference

Standing Senate Committee on Human Rights

Table 1: New Complaints Filed by Social Area and Grounds Cited
Total Number of Complaints Filed = 2,438

|                                      |     |          | y           |                      |             |       |            |               |               |                |                 |                   |               |                    |          |                 |                   |                    |                   |   |                              |
|--------------------------------------|-----|----------|-------------|----------------------|-------------|-------|------------|---------------|---------------|----------------|-----------------|-------------------|---------------|--------------------|----------|-----------------|-------------------|--------------------|-------------------|---|------------------------------|
| Accommodation                        | 6   | 4        | 3           |                      |             | 13    | 90         | 22            | 31            | 10             | 20              | 27                | 36            |                    | 7        | 16              | 7                 | 5                  | 297               | 168   | 7%                           |
| Contracts                            |     | 1        | 2           |                      |             |       | 2          | 4             |               | _ 1            | 4               |                   | 6             |                    | 3        | 4               | 1                 |                    | 28                | 11  | 0%                           |
| Employment                           | 136 | 94       | 23          | 5                    | 8           | 83    | 902        | 228           | 65            | 44             | 166             |                   | 520           | 7                  | 262      | 693             | 219               | 64                 | 3519              | 1900  | 78%                          |
| Services                             | 18  | 35       | 15          | 1                    | 5           | 27    | 173        | 67            | 16            | 7              | 44              | 2                 | 116           |                    | 15       | 43              | 1                 | 29                 | 614               | 334   | 14%                          |
| Vocational Associations              | 2   | 3        | 1           |                      |             | 1     | 16         | 4             |               |                | 2               |                   | 10            | 1                  | 2        | 6               | 1                 | 2                  | 51                | 25  | 1%                           |
| Total Grounds                        | 162 | 137      | 44          | 6                    | 13          | 124   | 1183       | 325           | 112           | 62             | 236             | 29                | 688           | 8                  | 289      | 762             | 229               | 100                | 4509              | 2438  | 100%                         |
| Percent of Ground Cited              | 4%  | 3%       | 1%          | 0%                   | 0%          | 3%    | 26%        | 7%            | 2%            | 1%             | 5%              | 1%                | 15%           | 0%                 | 6%       | 17%             | 5%                | 2%                 | 100%              |   |                              |
| Percent of Total<br>Complaints Filed | 7%  | 6%       | 2%          | 0%                   | 1%          | 5%    | 49%        | 13%           | 5%            | 3%             | 10%             | 1%                | 28%           | 0%                 | 12%      | 31%             | 9%                | 4%                 | *                 |   |                              |
|                                      | Age | Ancestry | Association | Breach of Settlement | Citizenship | Creed | Disability | Ethnic Origin | Family Status | Marital Status | Place of Origin | Public Assistance | Race & Colour | Record of Offences | Reprisal | Sex & Pregnancy | Sexual Harassment | Sexual Orientation | Sum of Categories | Total for all Complaints<br>per Social Area | Percentage of all Complaints |

<sup>\*</sup>Note: Because complaints can involve multiple grounds, the sum by grounds exceeds the total for all complaints filed, and the corresponding percentages of total complaints exceed 100%

Table 2: Settlements by Ground in Cases Mediated in 2001-2002

| Age  | \$ 57,743.49    | 13                             | \$ 4,441.81 |
|--|-----------------|--------------------------------|-------------|
| Ancestry   | \$ 19,500.00    | 5                              | \$ 3,900.00 |
| Association  | \$ 1,410.00     | 2                              | \$ 705.00   |
| Citizenship  | \$ 2,400.00     | 2                              | \$ 1,200.00 |
| Creed  | \$ 87,867.00    | 17                             | \$ 5,168.65 |
| Disability   | \$ 818,369.46   | 165                            | \$ 4,959.81 |
| Ethnic Origin  | \$ 148,206.00   | 27                             | \$ 5,489.11 |
| Family Status  | \$ 116,292.75   | 23                             | \$ 5,056.21 |
| Marital Status   | \$ 44,300.00    | 8                              | \$ 5,537.50 |
| Place of Origin  | \$ 108,550.00   | 23                             | \$ 4,719.57 |
| Public Assistance  | \$ 9,320.00     | 7                              | \$ 1,331.43 |
| Race and Colour  | \$ 311,840.00   | 58                             | \$ 5,376.55 |
| Reprisal   | \$ 246,637.66   | 43                             | \$ 5,735.76 |
| Sex & Pregnancy  | \$ 578,506.64   | 120                            | \$ 4,820.89 |
| Sexual Harassment  | \$ 224,117.40   | 43                             | \$ 5,212.03 |
| Sexual Orientation   | \$ 59,500.00    | 13                             | \$ 4,576.92 |
| Total for All Grounds*   | \$ 2,834,560.40 | 569                            | \$ 4,981.65 |
| *Note: Because complaints can involve multiple grounds, the total sum of monetary damages by ground exceeds the sum of monetary damages by complaints \$1,635,249.51 | Monetary        | Number<br>Receiving<br>Damages | Average     |

Table 3: Complaints Closed by Disposition and Grounds
Total Number of Complaints Closed = 1,932

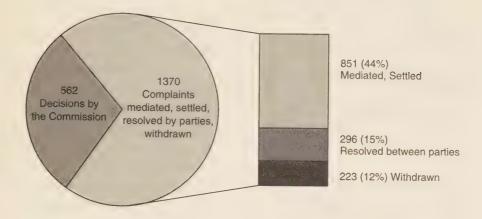
|                               | Age | Ancestry | Association | Breach of Settlement | Citizenship | Creed | Disability | Ethnic Origin | Family Status | Marital Status | Place of Origin | Public Assistance | Race & Colour | Record of Offences | Reprisal | Sex & Pregnancy | Sexual Harassment | Sexual Orientation | Sum of Categories | Total for all Complaints | Possontogo of all Comple |
|-------------------------------|-----|----------|-------------|----------------------|-------------|-------|------------|---------------|---------------|----------------|-----------------|-------------------|---------------|--------------------|----------|-----------------|-------------------|--------------------|-------------------|--------------------------|--------------------------|
| Percentage                    | 4%  | 4%       | 1%          | 0%                   | 0%          | 2%    | 22%        | 8%            | 2%            | 1%             | 6%              | 1%                | 17%           | 0%                 | 6%       | 19%             | 6%                | 1%                 | 100%              | S                        | sinte                    |
| Total                         | 144 | 131      | 31          | 4                    | 9           | 88    | 818        | 295           | 90            | 44             | 206             | 33                | 619           | 4                  | 231      | 697             | 206               | 54                 | 3704              | 1932                     | 100                      |
| Withdrawn                     | 15  | 12       | 9           | 1                    | 1           | 5     | 91         | 26            | 13            | 3              | 14              | 4                 | 57            |                    | 25       | 88              | 25                | 5                  | 394               | 223                      | 12                       |
| Settled                       | 52  | 43       | 4           |                      | 2           | 41    | 387        | 113           | 48            | 17             | 85              | 8                 | 252           | 1                  | 111      | 349             | 128               | 22                 | 1663              | 851                      | 44                       |
| Resolved                      | 29  | 20       | 2           |                      | 1           | 11    | 129        | 43            | 14            | 6              | 28              | 6                 | 103           |                    | 34       | 103             | 23                | 6                  | 558               | 296                      | 15                       |
| Referred to Board of Inquiry  |     | 4        |             | 1                    | 2           | 1     | 22         | 8             | 2             | 1              | 5               | 4                 | 16            |                    | 7        | 26              | 8                 | 1                  | 108               | 60                       | 3                        |
| Not Dealt With (Sect. 34)     | 23  | 21       | 2           | 1                    | 1           | 17    | 98         | 56            | 2             | 6              | 37              | 1                 | 92            | 2                  | 19       | 30              | 6                 | 9                  | 423               | 218                      | 11                       |
| Failed to<br>Provide Evidence | 4   | 2        |             |                      | 1           |       | 12         | 2             | 3             | 1              | 3               | 1                 | 14            |                    | 5        | 20              | 5                 | 1                  | 74                | 35                       | 2                        |
| Dismissed                     | 21  | 29       | 14          | 1                    | 1           | 13    | 79         | 47            | 8             | 10             | 34              | 9                 | 85            | 1                  | 30       | 81              | 11                | 10                 | 484               | 249                      | 13                       |

Note: Because complaints can involve multiple grounds, the sum by grounds exceeds the total for all complaints filed

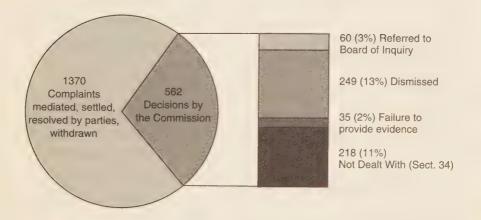
Table 4: Complaints Closed by Disposition and Social Area
Total Number of Complaints Closed = 1,932

| Dismissed                    | 24            | 3        | 155        | 61       | 6                       | 249               | 249                      | 13%                          |
|------------------------------|---------------|----------|------------|----------|-------------------------|-------------------|--------------------------|------------------------------|
| Failed to Provide Evidence   | 3.            |          | 28         | 3        | 1                       | 35                | 35                       | 2%                           |
| Not Dealt With (Section 34)  | 20            |          | 112        | 71       | 15                      | 218               | 218                      | 11%                          |
| Referred to Board of Inquiry | 5             | 1        | 50         | 3        | 1                       | 60                | 60                       | 3%                           |
| Resolved                     | 30            |          | 219        | 43       | 4                       | 296               | 296                      | 15%                          |
| Settled                      | 54            |          | 727        | 68       | 2                       | 851               | 851                      | 44%                          |
| Withdrawn                    | 18            | 4        | 180        | 21       |                         | 223               | 223                      | 12%                          |
| Total                        | 154           | 8        | 1471       | 270      | 29                      | 1932              | 1932                     | 100%                         |
| Percentage                   | 8%            | 0%       | 76%        | 14%      | 2%                      | 100%              |                          | nts                          |
|                              | Accommodation | Contract | Employment | Services | Vocational Associations | Sum of Categories | Total for all Complaints | Percentage of all Complaints |

## Resolved Cases: Details on Settlements



## **Breakdown of Commission Decisions**



## BOARD OF INQUIRY DECISIONS AND SETTLEMENTS

#### Decisions

## Age

Sinclair and Newby v. Morris A. Hunter Investments Ltd. et al.

#### **Breach of Settlement**

Seguin v. Ininew Friendship Centre et al.

#### Colour

Fuller v. Daoud and Desquilbet

Seguin v. Ininew Friendship Centre et al.

Sinclair and Newby v. Morris A. Hunter Investments Ltd., et al.

## Ethnic Origin

Fuller v. Daoud and Desquilbet

## **Handicap**

Turnbull, Chapman, Fragale, Wong-Ward, Macaulay v. Famous Players Inc.

#### Race

Fuller v. Daoud and Desquilbet

Sinclair and Newby v. Morris A. Hunter Investments Ltd. et al.

## Reprisal

Seguin v. Ininew Friendship Centre et al. Jones v. Amway of Canada et al.

#### Sex

Aass and Ross v. 811120 Ontario Limited et al.

#### **Sexual Solicitation**

Aass and Ross v. 811120 Ontario Limited et al.

## Settlements

#### Age

Thomas and Killingbeck v. General Electric Canada Inc. et al.

Feeney, Cossar and Gladish v. Sharisma Marketing Inc. et al.

Bennett, Ilkov, McKellar, Fermanis, Roblero and Kellman v. Cinram

Sadaat v. Hanley Corporation et al.

Turan v. McMaster University Mechanical Engineering Dept. et al.

## Ancestry

Thornton v. Her Majesty the Queen et al. Turan v. McMaster University Mechanical Engineering Dept. et al.

#### Colour

Sadaat v. Hanley Corporation et al.

Neptune v. Lavigne Tire Sales Limited et al.

Fuller v. Daoud and Desquilbet

Thornton v. Her Majesty the Queen et al.

Ladouceur v. Central Taxi et al.

## Ethnic Origin

Yenie v. Ideal Parking Inc. et al.

Petkovski v. 104055 Ontario Ltd. et al.

Fuller v. Daoud and Desquilbet

Turan v. McMaster University Mechanical Engineering Dept. et al.

## **Family Status**

Gilao v. York Condominium Corporation No. 340

Franklin v. 629703 Ontario Limited et al. Wray v. City of Hamilton et al.

## Handicap

Rodway v. Orange Properties Ltd. et al.

Lapierre v. Kidd Creek Mines et al.

Blake v. Grand Valley Knecktles et al.

Jeppesen v. Corporation of the Town of Ancaster

Fire and Emergency Services et al.

Lesser v. IBM Canada Ltd. et al.

Burke v. Toronto District School Board

Darocy v. Globe Manufacturing Inc. et al.

Mirzaie v. Rochester Aluminum Smelting

Canada Ltd. et al.

Brady v. City of Toronto Fire Department

Seeberan-Edwards v. Neinstein et al.

#### Harassment

Mirzaie v. Rochester Aluminum Smelting Canada Ltd. et al.

Broughton and M.C. Warren & Associates v. Warren

Rowe v. Stevanovich et al.

## Place of Origin

Sadaat v. Hanley Corporation et al.

Yenie v. Ideal Parking Inc. et al.

Turan v. McMaster University Mechanical

Engineering Dept. et al.

#### Race

Sadaat v. Hanley Corporation et al.

Yenie v. Ideal Parking Inc. et al.

Neptune v. Lavigne Tire Sales Limited et al.

Fuller v. Daoud and Desquilbet

Thornton v. Her Majesty the Queen et al.

Receipt of Public Assistance

Franklin v. 629703 Ontario Limited et al.

#### Reprisal

Petkovski and 104055 Ontario Ltd. et al.

Seeberan-Edwards v. Neinstein et al.

Wilson and Thorne v. Hi-Lo Investment et al.

#### Sex

Wray v. City of Hamilton et al.

Broughton and M.C. Warren & Associates v.

Warren

Pitcher v. Tubefit Inc.et al.

McLaughlin et al. v. Grenville Student

Transport Authority et al.

Turan v. McMaster University Mechanical

Engineering Dept. et al.

O'Dowd v. Bell Sygma Inc. et al.

Rowe v. Stevanovich et al.

#### Sexual Harassment

O'Dowd v. Bell Sygma Inc. et al.

Ladouceur v. Central Taxi et al.

## **Sexual Solicitation**

Rowe v. Stevanovich et al.

Ladouceur v. Central Taxi et al.

## Divisional Court (Judicial Review)

#### Ancestry

Lanuza v. Toronto Hospital and OHRC.

#### Association

Sandringham Place Inc. et al. v. OHRC

#### Colour

Lanuza v. Toronto Hospital and OHRC

### **Family Status**

Sandringham Place Inc. et al. v. OHRC

## Handicap

Sandringham Place Inc. et al. v. OHRC

Service Employees International Union et al. v.

The Ontario Jockey Club et al. (OHRC as Intervenors)

#### Place of Origin

Lanuza v. Toronto Hospital and OHRC

#### Race

Lanuza v. Toronto Hospital and OHRC

#### Sex

Lanuza v. Toronto Hospital and OHRC Pritchard v. Sears Canada Inc. and OHRC

#### Sexual Harassment

Pritchard v. Sears Canada Inc. OHRC

### Reprisal

Pritchard v. Sears Canada Inc. and OHRC

## Court of Appeal

#### Creed

Speaker of the Legislative Assembly of Ontario and OHRC v. Freitag

## Handicap

OHRC and Dofasco Inc. v. Jeffrey et al.

#### Harassment

Thomas v. OHRC and Midas Canada Inc.

#### Race

Shiu and OHRC v. Superior-Greenstone District School Board et al.

OHRC and Naraine v. Ford Motor Company of Canada Ltd. et al.

#### Sex

Thomas v. OHRC and Midas Canada Inc.

## Leave to Appeal to CA dismissed:

Ancestry, Colour, Race, Harassment
Patel v. The Regional Municipality of Peel et al.
and OHRC

## Supreme Court of Canada

## Leave to Appeal to SCC dismissed:

Ancestry, Colour, Race, Harassment
Patel v. The Regional Municipality of Peel et al.
and OHRC

## FINANCIAL STATEMENT

## 2001-2002 Actual Year-End Financial Position (\$'000)

|  | 2001-02              | Year-End              | Revised                 | Actual                       | _     | :001-2002<br>End Variance |
|--|----------------------|-----------------------|-------------------------|------------------------------|-------|---------------------------|
|  | Printed<br>Estimates | Budget<br>Adjustments | Budget<br>Mar. 31, 2002 | Expenditure<br>Mar. 31, 2002 | \$    | % of Revised<br>Budget    |
| Salaries & Wages                       | 7,924.1              | (1,003.8)             | 6,920.3                 | 6,642.4                      | 277.9 | 4.0                       |
| Employee Benefits                      | 1,349.1              | 71.6                  | 1,420.7                 | 1301.6                       | 119.1 | 8.4                       |
| Other Direct Operation Expenses (ODOE) | ing <b>2,087.9</b>   | 1,444.4               | 3,532.3                 | 3,416.1                      | 116.2 | 3.3                       |
|  | 11,361.1             | 512.2                 | 11,873.3                | 11,360.1                     | 513.2 | 4.3                       |

Note: The OHRC 2001-02 budget, with Management Board approval, increased by \$512.2 at year-end (to fund Labour Adjustment Costs \$147.2 and base budget shortfall \$365.0).

Race

Shiu and OHRC v. Superior-Greenstone District School Board et al.

OHRC and Naraine v. Ford Motor Company of Canada Lid. et al.

Sexe

Thomas v. OHRC and Midas Canada Inc.

Autorisations d'appel devant la Cour d'appel refusées :

Ascendance, couleur, race, harcèlement Patel v. The Regional Municipality of Peel et al. and OHRC

Cour suprême du Canada

Pourvois en appel devant la Cour suprême rejetés:

Ascendance, couleur, race, harcelement Patel v. The Regional Municipality of Peel et al. and OHRC

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Lanuza v. Toronto Hospital and OHRC Pritchard v. Sears Canada Inc. and OHRC

Harcèlement sexuel

Pritchard v. Sears Canada Inc. and OHRC

Représailles

Pritchard v. Sears Canada Inc. and OHRC

# Cour d'appel

Croyance

Speaker of the Legislative Assembly of Ontario and OHRC v. Freitag

Handicap

OHRC and Dofasco Inc. v. Jeffrey et al.

Harcèlement

Thomas v. OHRC and Midas Canada Inc.

# ETATS FINANCIERS

# Situation financière à la fin de l'exercice 2001-2002 (en milliers de dollars)

| 4.3   | 5.215 | 1.036,11                               | 6.678,11                            | 512.2                               | 1.136,11              |  |
|---|-------|--|-------------------------------------|-------------------------------------|-----------------------|--|
| 5.5   | 2.911 | 1,814,8                                | 5.552.3                             | 1,444.4                             | 6.780,2               | Autres dépenses directe<br>de fonctionnement |
| 4.8   | 1.911 | 9.10£,1                                | 7,024,1                             | 9.17                                | 1,945,1               | Avantages sociaux                            |
| 0.4   | 6.772 | 6,642.4                                | 6,920.3                             | (8.500,1)                           | 1,426,7               | Salaires et traitements                      |
| n fin d'exercice<br>101-2002<br>% du budget<br>révisé |       | Dépenses<br>né elles au<br>2002 sam 18 | Budget<br>révisé au<br>31 mars 2002 | Ajustements<br>de fin<br>d'exercice | Budget<br>de dépenses |  |

Remarque: Le budget de 2001-02 de la Commission a été majoré avec l'approbation du Conseil de gestion, de 512.2 dollars en fin d'exercice (dont 147.2 dollars au titre de la reconversion de la main-d'œuvre et 365.0 dollars pour la révision du budget).

Sexe

Engineering Dept. et al. Turan v. McMaster University Mechanical Transport Authority et al. McLaughlin et al. v. Grenville Student Pitcher v. Tubefit Inc. et al. Marren Broughton and M.C. Warren & Associates v. Wray v. City of Hamilton et al.

Rowe v. Stevanovich et al. O'Dowd v. Bell Sygma Inc. et al.

Harcèlement sexuel

Ladouceur v. Central Taxi et al. O'Dowd v. Bell Sygma Inc. et al.

Ladouceur v. Central Taxi et al. Rowe v. Stevanovich et al. Avances sexuelles

en révision judiciaire) Cour divisionnaire (requêtes

Lanuza v. Toronto Hospital and OHRC. Ascendance

Association

Sandringham Place Inc. et al. v. OHRC

Lanuza v. Toronto Hospital and OHRC Couleur

Etat familial

Sandringham Place Inc. et al. v. OHRC

Handicap

Service Employees International Union et al. v. Sandringham Place Inc. et al. v. OHRC

la CODP en qualité d'intervenant) The Ontario Jockey Club et al. (comparution de

Lieu d'origine

Lanuza v. Toronto Hospital and OHRC

Lanuza v. Toronto Hospital and OHRC

Handicap

Mirzaie v. Rochester Aluminum Smelting Darocy v. Globe Manufacturing Inc. et al. Burke v. Toronto District School Board Lesser v. IBM Canada Ltd. et al. Fire and Emergency Services et al. Jeppesen v. Corporation of the Town of Ancaster Blake v. Grand Valley Knecktles et al. Lapierre v. Kidd Creek Mines et al. Rodway v. Orange Properties Ltd. et al.

Brady v. City of Toronto Fire Department Canada Ltd. et al.

Seeberan-Edwards v. Neinstein et al.

Harcèlement

Canada Ltd. et al. Mirzaie v. Rochester Aluminum Smelting

Broughton and M.C. Warren & Associates v.

Marren

Rowe v. Stevanovich et al.

Lieu d'origine

Turan v. McMaster University Mechanical Yenie v. Ideal Parking Inc. et al. Sadaat v. Hanley Corporation et al.

Engineering Dept. et al.

Race

Neptune v. Lavigne Tire Sales Limited et al. Yenie v. Ideal Parking Inc. et al. Sadaat v. Hanley Corporation et al.

Fuller v. Daoud and Desquilber

Thornton v. Her Majesty the Queen et al.

Etat d'assisté social

Franklin v. 629703 Ontario Limited et al.

Petkovski and 104055 Ontario Ltd. et al. Représailles

Seeberan-Edwards v. Neinstein et al.

Wilson and Thorne v. Hi-Lo Investment et al.

### DÉCISIONS ET RÈGLEMENTS DE LA COMMISSION D'ENQUÊTE

# Règlements

# agA

Kellman v. Cinram Bennett, Ilkov, McKellar, Fermanis, Roblero and Marketing Inc. et al. Feeney, Cossar and Gladish v. Sharisma Canada Inc. et al. Thomas and Killingbeck v. General Electric

Sadaat v. Hanley Corporation et al.

Engineering Dept. et al. Turan v. McMaster University Mechanical

# Ascendance

Engineering Dept. et al. Turan v. McMaster University Mechanical Thornton v. Her Majesty the Queen et al.

# Couleur

Thornton v. Her Majesty the Queen et al. Fuller v. Daoud and Desquilbet Neptune v. Lavigne Tire Sales Limited et al. Sadaat v. Hanley Corporation et al.

Ladouceur v. Central Taxi et al.

# Origine ethnique

Engineering Dept. et al. Turan v. McMaster University Mechanical Fuller v. Daoud and Desquilbet Petkovski v. 104055 Ontario Ltd. et al. Yenie v. Ideal Parking Inc. et al.

#### Etat familial

Wray v. City of Hamilton et al. Franklin v. 629703 Ontario Limited et al. Gildo v. York Condominium Corporation No. 340

# Décisions

# Age

Investments Ltd. et al. Sinclair and Newby v. Morris A. Hunter

# Violation du règlement intervenu

Seguin v. Ininew Friendship Centre et al.

# Couleur

Investments Ltd. et al. Sinclair and Newby v. Morris A. Hunter Seguin v. Ininew Friendship Centre et al. Fuller v. Daoud and Desquilber

# origine ethnique

Fuller v. Daoud and Desquilbet

### Handicap

MaCaulay v. Famous Players Inc. Turnbull, Chapman, Fragale, Wong-Ward,

#### Kace

Investments Ltd. et al. Sinclair and Newby v. Morris A. Hunter Fuller v. Daoud and Desquilbet

# Représailles

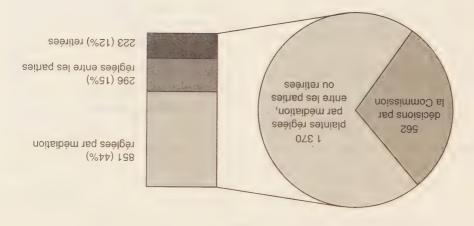
Jones v. Amway of Canada et al. Seguin v. Ininew Friendship Centre et al.

Aass and Ross v. 811120 Ontario Limited et al.

### Avances sexuelles

Aass and Ross v. 811120 Ontario Limited et al.

# Dossiers fermés, par type de règlement



#### Ventilation des décisions de la Commission

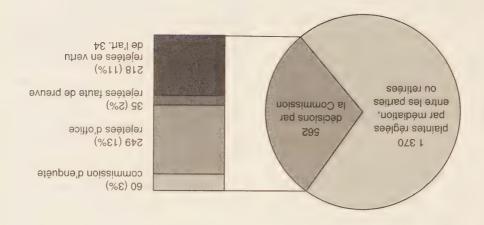


Tableau 3 : Dossiers fermés, par décision prise et par motifs cités da les plaintes - Nombre total de dossiers fermés : 1 932

| Total fdes plaintes | Total toutes categories* | Violation du règlement intervenu | Sexe et grossesse | Représailles | Race et couleur | Origine ethnique | Orientation sexuelle | Lieu d'origine | Harcèlement sexuel | Handicap | État matrimonial | État familial | État d'assisté social | Croyance | Citoyenneté | Casier Judiciaire | Association | Ascendance | Âge |                                |
|---------------------|--------------------------|----------------------------------|-------------------|--------------|-----------------|------------------|----------------------|----------------|--------------------|----------|------------------|---------------|-----------------------|----------|-------------|-------------------|-------------|------------|-----|--------------------------------|
|                     | %00L                     | %0                               | %61               | %9           | %21             | %8               | %1                   | %9             | %9                 | %77      | %1               | 5%            | %1                    | 5%       | %0          | %0                | %1          | %7         | %7  | Pourcentage                    |
| 1635                | 3704                     | ħ                                | <b>L69</b>        | 231          | 619             | 595              | 12                   | 206            | 506                | 818      | 77               | 06            | 33                    | 88       | 6           | t                 | 18          | 131        | かし  | Total                          |
| 223                 | 394                      | ļ                                | 88                | 52           | 29              | 56               | g                    | たし             | 52                 | 16       | 3                | 13            | Þ                     | S        | L           |                   | 6           | 12         | 91  | Plainte retirée                |
| 128                 | 1663                     |                                  | 346               | 111          | 252             | 511              | 22                   | 98             | 128                | 785      | 11               | 817           | 8                     | 17       | 2           | ŀ                 | t           | 43         | 25  | Règlement<br>par médiation     |
| 596                 | 829                      |                                  | 103               | 34           | 103             | 43               | 9                    | 28             | 53                 | 159      | 9                | t1            | 9                     | 11       | 1           |                   | 2           | 50         | 58  | Règlement entre<br>les parties |
| 09                  | 108                      | L                                | 56                | 7            | 91              | 8                | L                    | 9              | 8                  | 22       | L                | 2             | t                     | ļ        | 2           |                   |             | t          |     | Commission d'enquête           |
| 218                 | 423                      | ļ                                | 30                | 61           | 76              | 99               | 6                    | 28             | 9                  | 86       | 9                | 2             | ļ                     | 41       | ļ.          | S                 | 2           | 21         | 23  | Plainte non traitée (art. 34)  |
| 32                  | t/L                      |                                  | 50                | g            | 11              | 2                | 1                    | 3              | S                  | 12       | ŀ                | ε             | L                     |          | Ļ           |                   |             | 2          | t   | Abandon faute                  |
| 249                 | 181                      | ļ.                               | †8                | 30           | 98              | 14               | 10                   | 34             | 11                 | 64       | 10               | 8             | 6                     | 13       | I.          | 1                 | カレ          | 58         | 12  | Plainte rejetée                |

<sup>\*</sup>Remarque: Vu qu'une plainte peut être fondée sur plusieurs motifs, ce total est supérieur au total des plaintes déposées.

# Tableau 4: Dossiers fermés, par décision prise et par domaine Nombre total de dossiers fermés: 1 932

|   | Logement | Contrats | Emploi | Services | Associations professionnelles | Total toutes catégories | Total des plaintes | Pourcentage du total des plaintes |
|---|----------|----------|--------|----------|-------------------------------|-------------------------|--------------------|-----------------------------------|
| Pouncentage                                   | %8       | %0       | %94    | %71      | %7                            | %001                    |                    |                                   |
| ls3oT   | 124      | 8        | 1471   | 270      | 58                            | 1935                    | 1932               | %001                              |
| Plainte retirée                               | 81       | Þ        | 081    | 12       |                               | 223                     | 223                | 15%                               |
| Règlement par médiation                       | ₽9       |          | 727    | 89       | 2                             | 128                     | 138                | %77                               |
| Règlement entre les parties                   | 30       |          | 219    | €⊅       | †                             | 596                     | 967                | %9L                               |
| Commission d'enquête                          | S        | L        | 09     | 3        | 1                             | 09                      | 09                 | %€                                |
| Invocation de l'art. 34 – Plainte non traitée | 50       |          | 112    | 14       | 91                            | 218                     | 218                | %11                               |
| Abandon faute de preuves                      | 3        |          | 82     | 3        | L                             | 38                      | 32                 | %Z                                |
| Painte rejetée                                | 24       | 3        | 122    | 19       | 9                             | 249                     | 249                | 43%                               |

# Tableau 1 : Plaintes déposées, par domaine et par motifs cités Nombre total de plaintes déposées = 2 438

| Pourcentage du total des pla | Total des plaintes | Total toutes citations | Violation du règlement intervenu | Sexe et grossesse | Représailles | Race et couleur | Origine ethnique | Orientation sexuelle | Lieu d'origine | Harcèlement sexuel | Handicap | État matrimonial | État familial | État d'assisté social | Croyance | Citoyenneté | Casier Judiciaire | Association | Ascendance | Âge |                                      |
|------------------------------|--------------------|------------------------|----------------------------------|-------------------|--------------|-----------------|------------------|----------------------|----------------|--------------------|----------|------------------|---------------|-----------------------|----------|-------------|-------------------|-------------|------------|-----|--------------------------------------|
| plaintes                     |                    | *                      | %0                               | %18               | 15%          | %87             | 13%              | %t                   | %0L            | %6                 | %67      | %8               | %S            | %1                    | %g       | %1          | %0                | %7          | %9         | %4  | Pourcentage du total<br>des plaintes |
|                              |                    | %001                   | %0                               | %21               | %9           | %9L             | %4               | 5%                   | %9             | %S                 | %97      | %1               | %7            | %1                    | %8       | %0          | %0                | %1          | %8         | %Þ  | Pourcentage<br>par motif cité        |
| %001                         | 2438               | 6097                   | 9                                | 297               | 585          | 889             | 325              | 100                  | 236            | 559                | 1183     | 29               | 112           | 58                    | 124      | 13          | 8                 | bb          | 137        | 162 | Total                                |
| % }                          | 52                 | 13                     |                                  | 9                 | 2            | 01.             | Þ                | 2                    | 2              | 1                  | 91       |                  |               |                       | 1        |             | L                 | L           | 3          | 2   | Association<br>elofessionnelle       |
| % <b>†</b> I                 | 334                | <b>119</b>             | 1                                | 43                | 91           | 911             | <b>4</b> 9       | 58                   | tt             | ļ.                 | 173      | 2                | 91            | 2                     | 7.2      | S           |                   | 91          | 32         | 81  | Services                             |
| %82                          | 0061               | 6198                   | g                                | 869               | 262          | 920             | 228              | <del>7</del> 9       | 991            | 219                | 805      | tt               | 99            |                       | 83       | 8           | 7                 | 23          | <b>†</b> 6 | 136 | Emploi                               |
| %0                           | 11                 | 82                     |                                  | t                 | 3            | 9               | 7                |                      | Þ              | l.                 | 2        | F                |               |                       |          |             |                   | 2           | Ļ          |     | Contrats                             |
| %1                           | 891                | 262                    |                                  | 91                | 2            | 98              | 22               | g                    | 50             | 2                  | 06       | 10               | 18            | 72                    | 13       |             |                   | 3           | Þ          | 9   | Logement                             |

<sup>\*</sup>Remarque: Vu qu'une plainte peut être fondée sur plulsieurs motifs, le total pour l'ensemble des citations de motifs est supérieur au total des plaintes déposées et le pourcentage correspondant du total des plaintes serait donc supérieur à 100%.

# Tableau 2 : Règlements intervenus en 2001-2002 à l'issue d'une médiation, par motifs cités dans les plaintes

| Moyenne      | Personnes | Dommages-<br>intérêts | *Remarque: Vu qu'une plainte peut être fondée sur plusieurs motifs, le total général obtenu en reprenant pour chaque motif cité les dommages-intérêts accordés à une plaignante ou un plaignant dépasse le total réel des règlements intervenus pour l'ensemble des plaintes (1 635 249,51) |
|--------------|-----------|-----------------------|---|
| \$ 99'186 7  | 699       | \$ 834 260,40 \$      | Total général*  |
| \$ 68,028 4  | 120       | \$ +9'909 849         | Sexe et grossesse   |
| \$ 92,357 8  | 43        | \$ 99'\29 977         | Représailles  |
| \$ 99'928 9  | 89        | \$ 00,048 118         | Race et couleur   |
| \$ 11'687 9  | 72        | 148 206,00 \$         | Origine ethnique  |
| \$ 26'949 \$ | 13        | \$ 00'009 69          | Orientation sexuelle  |
| \$ 29'612 7  | 23        | \$ 00,023 801         | Lieu d'origine  |
| 6 212,03 \$  | 43        | 224 117,40 \$         | Harcèlement sexuel  |
| \$ 18'696 7  | 991       | \$ 94,698 818         | Handicap  |
| \$ 09'289 9  | 8         | \$ 00'008 77          | État matrimonial  |
| \$ 12,880 8  | 53        | \$ 57,262 911         | État familial   |
| \$ 54,155 1  | <i>L</i>  | \$ 00'028 6           | État d'assisté social   |
| \$ 59'891 9  | 71        | \$ 00'498 48          | Стоуапсе  |
| 1 200,00 \$  | 2         | \$ 400,000 \$         | Citoyenneté   |
| \$ 00'904    | 2         | \$ 00'017 1           | Association   |
| \$ 00'006 &  | S         | \$ 00'009 61          | Ascendance  |
| \$ 18'177 7  | 13        | \$ 67'874 49          | əşÂ   |

d'éducation) Université York, Faculty of Education (faculté étudiants ayant des besoins spéciaux) Office (bureau des services aux étudiantes et Université Wilfrid Laurier, Special Needs maîtrise en administration publique (école d'études politiques) - Programme de Université Queen's, School of Policy Studies

# Secteur public

sociaux de l'Ontario Association des travailleuses et travailleurs

(programme d'études sur le travail)

Université York, Labour Studies Programme

de l'Ontario Association du logement sans but lucratif

de la personne Comité permanent du Sénat sur les droits normes d'emploi, ministère du l'ravail Centre de dépôt des demandes relatives aux

personne, Direction des politiques Commission canadienne des droits de la

Colombie-Britannique Commission des droits de la personne de la

Nouvelle-Ecosse Nouveau-Brunswick et de la Commissions des droits de la personne du

services spirituels et religieux Conseil multiconfessionnel ontarien des

**CSPAAT** Employeurs de l'annexe 2 - conférence de la

Ministère des Richesses naturelles Employment Resource Managers' Network

Ministère du Travail

Municipal WSIB Users Group (groupe de Mount Sinai Hospital

Ombudsman Ontario clients municipaux de la CSPAAT)

l'Ontario Ordre des enseignantes et des enseignants de

de santé publique Ville de Hamilton, services sociaux et services

(equité) (bureau chargé des questions d'accès et Ville de Toronto, Access & Equity Unit

Future Abilities and Creative Employment

à l'autonomie de vie) de London et de la Independent Living Centre (centre de soutien

London Area Mediators' Association Les amis francophiles du Niagara

Parkdale Intercultural Association - salon de

l'emploi

Peel Region Islamic Circle of North America

Société canadienne de l'ouïe

régionaux de Halton) Victim-less 2001 Conference (services policiers Toronto Theatre Alliance

Dénévolat) - conférence Ready and ABLE Volunteer Centre of Toronto (centre de

YMCA - Employment Services Information Wabano Centre for Aboriginal Health

sur les services d'emploi) Warehouse (« entrepôt » de renseignements

### Secteur de l'éducation

Collège des Grands Lacs Collège Canadore – North Bay (2)

humaines) (2) Programme (programme de ressources Collège George Brown, Human Resources

Management (gestion des ressources Collège Georgian – Human Resources

Collège Niagara usines)

Collège Sheridan

Dufferin-Peel Catholic District School Board

Ecole secondaire Bear Creek

Ecole secondaire Nantyr Shores

La Cité collégiale

Université de Waterloo Ontario Business Educators' Association

Université Laurentienne (2)

Université McMaster

condition des personnes handicapées) of Disability Studies (école d'étude de la Université polytechnique Ryerson - School

# LISTE DES ACTIVITÉS D'ÉDUCATION DU PUBLIC

Canadian Association of Pre-Retirement Barreau du Haut-Canada

Casino Niagara Planners

Centre for Labour-Management Development

Hicks Morley (3)

conférence Infonex, « l'école du monde des affaires » – Huronia Bed and Breakfast Association

- conférence industrielles de l'Université de Toronto Lancaster House et section des relations

Osgoode Hall Law School, programme de Metropolitan Toronto Lawyers' Association Matrix Logistics Services Limited

slmsoft.com Inc. Rapistan Systems Ltd. services communautaires et d'aide juridique

TSC Stores Ltd. The Canadian Institute (2) Spherion Workforce Architects

### Secteur communautaire

(OASAA) Adult Protective Service Association of Ontario

communautaire (3) Association canadienne pour l'intégration Association canadienne des individus retraités Ajax Baha'i Community

Beatrice House Association ontarienne de gérontologie

Chinese Lingual-Cultural Centre of Canada Centre communautaire Wood Green Centre communautaire Warden Woods

de Kitchener Comité des relations interraciales de la ville

de Markham Comité des relations interraciales de la ville

Fierté gai et lesbienne 2001 COSTI (services aux immigrants) (2)

#### Affaires autochtones

indiens de l'Ontario) Centres (Fédération des centres d'accueil Ontario Federation of Indian Friendship

# Affaires internationales

Afrique du Sud

Human Rights Forum 21 (forum sur les droits Délégation éthiopienne

(délégation de 8 personnes du Viet-Nam) Le Centre parlementaire - Programme assatique de la personne, tenu au Japon)

(centre de documentation juridique), M. Ashraf Mohomad, Legal Resources Centre

Santé de Nouvelle-Zélande personnes handicapées) du ministère de la Issues Directorate (direction des affaires des tion des personnes handicapées, Disability stratégie néozélandaise relative à la condi-M. Kylie Clode, responsable de politique,

de la personne de Nouvelle-Zélande) Rights Commission (commission des droits M. Michael Powles, New Zealand Human

(Mouvelle-Zélande) M. Paul Rishworth, Université de Auckland

Chana l'homme et de la justice administrative du M. Seth Obo, Commission des droits de

# **aupibinu** Secteur commercial et

Akzo Nobel Coatings Ltd.

Association of Ontario ou HRPAO) Ontario (Human Resources Professionals professionnels en ressources humaines de Association des professionnelles et

- Brantford

- Guelph et district

- Nord-Ouest de l'Ontario - Halton

- North Bay

- Quinte

- Toronto (conférence annuelle 2002)

Bancroft Institute

| 3        | Courriel: cservice@cch.ca  |   |
|----------|----------------------------|---|
| 77       | Sans frais: 1 800 268-45.  |   |
|          | Toronto ON M2N 6X1         |   |
|          | 90, avenue Sheppard Est    |   |
|          | Bureau 300                 |   |
|          | CCH Canadian Ltd.          |   |
|          | Contactez                  | Politique des droits de la personne en Ontario (2001)             |
| 1        | h.                         | atteinte aux droits de la personne (6/96)                         |
| 1        |                            | La création de procédures internes de règlement des plaintes F    |
| τ        | po Contactez la Commission | Code des droits de la personne en format cartonné de 11 x 17      |
| N        | Λ.                         | Code des droits de la personne                                    |
| F        | T*                         |   |
|          |                            | Autres Publications   |
| ^        |                            | inconvenantes liées au sexe (9/96)                                |
|          | 163                        | Politique sur le harcèlement sexuel et les remarques et condui    |
| 1        |                            | Politique sur la mutilation génitale féminine (11/00)             |
| 1        |                            | l'identité sexuelle (3/00)  |
|          |                            | Politique sur la discrimination et le harcèlement en raison de    |
| 1        |                            | aux observances religieuses (10/96)                               |
|          |                            | Politique sur la croyance et les mesures d'adaptation relatives   |
| 1        |                            | Politique relative aux bourses d'études restrictives (7/97)       |
| 1        |                            | (00/11) (noisesque b uo)  |
|          |                            | Politique et directives concernant le handicap et l'obligation o  |
| 1        |                            | Politique concernant les tests de dépistage de l'alcool et autres |
| 1        |                            | Politique concernant les renseignements médicaux liés à l'em      |
| 1        |                            | Politique concernant le poids et la grandeur comme exigence.      |
| 1        | (6/9) iolqmə'b             | Politique concernant le permis de conduire comme condition        |
| 1        |                            | plaisanteries et autres (6/96)                                    |
|          |                            | Politique concernant le harcèlement racial par des insultes, de   |
| <b>\</b> |                            | Politique concernant la discrimination liée au VIH et au SID      |
| Λ.       | (6                         | Politique concernant la discrimination liée à la grossesse (5/9)  |
| V        |                            | sur l'orientation sexuelle (1/00)                                 |
|          | Iés                        | Politique concernant la discrimination et le harcèlement fonc     |
| 1        |                            | Politique concernant la discrimination et la langue (6/96)        |
| 1        |                            | Directives pour les programmes spéciaux (11/97)                   |
| Site     | oinsinO                    | Politiques et directives  |
| Web      | Publications               |   |
|          |                            |   |

Contactez la Commission

à une médiation (9/99)

Rapport annuel

Rapport sur la satisfaction des personnes ayant participé

# Direction des services juridiques

La Direction des services juridiques aide la Commission à s'acquirter de tous les éléments de son mandat, notamment pour ce qui est de veiller au respect du Code, d'éduquer le public ou de plaider des causes. Elle fournit des conseils juridiques sur la préparation des plaintes et la conciliation des parties tant aux membres de la haute direction qu'aux chefs et agentes ou agents de la Direction de la médiation et des enquêtes. Enfin, elle donne à la Commission les avis juridiques que celle-ci lui demande et fournit les avocates et avocats qui représentent la Commission devant la commission d'enquête et les tributet avocats qui représentent la Commission devant la commission d'enquête et les tribunaux lors des révisions judiciaires et des appels.

#### LISTE DES PUBLICATIONS

| Λ.     |                                       | Vous embauchez ? Pensez aux droits de la personne (9/99)                     |
|--------|---------------------------------------|--|
| \<br>\ | ٨                                     | Vos droits avant, pendant et après la grossesse (5/99)                       |
| 1      | ^                                     | de la personne : Le guide des parties mises en cause ou intimées (5/97)      |
| 1      |                                       | Que faire si on porte plainte contre vous pour atteinte aux droits           |
| ٨      |                                       | Le guide des parties plaignantes (5/97)                                      |
| 1      |                                       | Que faire en cas d'atteinte aux droits de la personne:                       |
| ٨      | ٨                                     | Protection des droits religieux (1/00)                                       |
| 1      | 10                                    | Orientation sexuelle: vos droits et vos responsabilités (11/01)              |
| 1      | Λ (O                                  | en français/anglais; gujrati/tamoul; hindi/punjabi; bengali/ourdou) (7/0     |
|        | / (0                                  | Les droits de la personne en Ontario : Guide des plaignants (disponible      |
| Α.     | Α.                                    | Les droits de la personne au travail (9/99)                                  |
| 1      | ^                                     | ct autres (6/96)   |
| 1      |                                       | Le harcèlement racial par des insultes, des mauvaises plaisanteries          |
| Α.     | (6                                    | (disponible en français/anglais; arabe/somalien, swahili/amharique) (8/9     |
| 1      | (0                                    | La mutilation génitale féminine : questions et réponses                      |
| ٨      | Α.                                    | La Commission : renseignements importants (11/01)                            |
| 1      | 1                                     | Harcèlement sexuel : vos droits et vos responsabilités (11/01)               |
| 1      | 1                                     | q, nue betsonne (11/96)  |
| 1      |                                       | Harcèlement sexuel et autres actions ou commentaires liés au sexe            |
| ٨      | ٨                                     | Harcèlement racial : vos droits et vos responsabilités (11/01)               |
| 1      | N                                     | Guide du Code des droits de la personne (5/99)                               |
| , h    | \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ | Grossesse et allaitement naturel : vos droits et vos responsabilités (11/01) |
| N      | 10                                    | Embauche (11/01)   |
| 1      | 15                                    | Ce qu'il faut savoir sur les services de médiation (5/97)                    |
| 1      | 011771110                             | Publications en langage clair  |
| Web    | Ontario                               |  |
| Site   | Publications                          |  |

# Direction de la médiation et des enquêtes

La Direction de la médiation et des enquêtes assure toutes les fonctions de la Commission liées à l'exécution du Code à partir d'une série de bureaux disséminés à travets la province.

L'Unité des renseignements et de l'accueil, la seule à être centralisée, est le premier point de contact du public avec la Commission. Ses agentes et agente répondent aux questions des personnes qui communiquent avec la Commission des quatre coins de la province et formulent une première ébauche de leurs plaintes, s'il y a lieu. Le Bureau de la médiation assure les services de médiation, mais examine aussi les demandes à la lumière de l'article 34 du Code, qui prévoit que la Commission peut, à sa discrétion, décider de ne pas traitet une plainte si celle-ci pourrait ou devrait être traitée en vertu décider de ne pas traitet une plainte si celle-ci pourrait ou devrait être traitée en vertu si elle est faire de mauvaise foi, si elle est déposée après le délai prévu ou si elle n'est pas du ressort de la Commission. Le Bureau des enquêtes mène des enquêtes sur les plaintes et essaie de résoudre les plaintes par conciliation.

La Direction met également au point des stratégies plutiannuelles pour géret efficacement les dossiers de la Commission et définir la marche à suivre pour la médiation et les enquêtes. Enfin, elle appuie les activités d'éducation du public que la Commission entreprend conformément à son mandat.

# Direction des politiques et de l'éducation

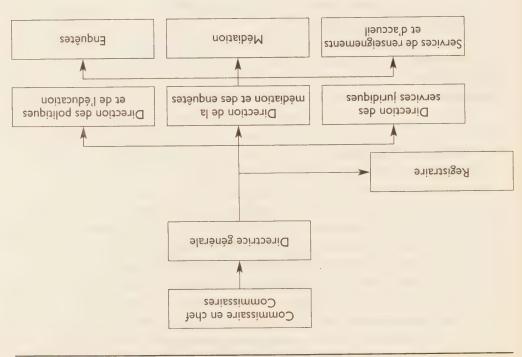
La Direction des politiques et de l'éducation dirige et oriente la promotion et l'avancement des droits de la personne. Elle a aussi pour mission d'appuyer l'application du Code. La Direction favorise la promotion des droits de la personne en assurant le respect

du Code et des obligations internationales dans le domaine des droits de la personne. Elle élabore des énoncés de politique et des directives officielles et mène des recherches sur une vaste gamme de questions reliées aux droits de la personne et à la justice sociale. La Direction est responsable des relations à l'échelle nationale et internationale, de la gestion des dossiers, des rapports avec les médias et autres groupes s'intéressant aux activités de la Commission, du site Web et des publications. De plus, elle mène des consultations publiques, anime des groupes de discussion et représente la Commission auprès d'équipes de travail et de délégations intergouvernementales.

La Direction est responsable de la planification stratégique des campagnes

d'éducation du public, des programmes de communications au niveau de la Commission et de la mise en oeuvre d'un vaste éventail de programmes éducatifs et d'initiatives de partenatiat, comme des campagnes de sensibilisation, des présentations, des ateliers et des conférences. Finalement, elle fournit un soutien en matière de politiques et de communications au Bureau du commissaire en chef et au Bureau du directeur général.

#### ORGANIGRAME



# STRUCTURE DE LA COMMISSION

# Bureau du commissaire en chef

Le commissaire en chef joue le rôle principal parmi les commissaires qui forment la Commission. Il veille à ce que la Commission s'acquitte des fonctions que lui impose la loi d'une manière qui garantir le respect des droits de la personne en Ontario, tant dans le secteur public que dans le secteur privé. Le commissaire en chef et les commissaires établissent les principes directeurs de la Commission et statuent sur les plaintes déposées en application du Code.

#### Bureau du directeur général

La personne qui occupe le poste de directeur général joue le rôle principal parmi les chefs des directions qui aident la Commission à s'acquitter des fonctions que lui impose la loi. Elle dirige l'élaboration et la mise en oeuvre des plans d'affaires et des plans opérationnels se rapportant à ces directions, de même que la planification et l'exécution des initiatives visant à améliorer leur aménagement organisationnel. Le Bureau du registraire, qui relève du Bureau du directeur général, traite les demandes de réexamen des décisions relatives aux plaintes pour atteinte aux droits de la personne, coordonne l'ensemble des fonctions liées aux réunions de la Commission et des comités, et s'occupe de rout ce qui touche l'accès à l'information et l'ombudaman.

#### MAE RADFORD

Mae Radford est membre de la Commission depuis avril 1999. M<sup>me</sup> Radford détient un diplôme en soins infirmiers du Toronto Western Hospital et un baccalauréat ès arts en administration de la santé de l'université York. Aujourd'hui, elle gère une équipe de 1 700 bénévoles qui offrent des services de visites amicales, des soins palliatifs, des services de transport et des repas à de visites amicales, des soins palliatifs des services de transport et des repas à de visites amicales, des soins palliatifs.



Hamilton-Wentworth.

M<sup>me</sup> Radford fait partie de la Coalition of Community Health and Support Services, qui préconise la prestation de soins de santé en milieu communautaire. Elle est membre de l'Association ontarienne de soutien communautaire et présidente du district B. M<sup>me</sup> Radford est aussi vice-présidente du comité populaire de lutte contre la violence faite aux femmes de la ville de Burlington.

#### RICHARD THEBERGE

Richard Théberge, avocat, analyste de politiques et conseiller en communications de profession, a été nommé à la Commission en février 2002. Il a occupé plusieurs postes de haut rang au sein du gouvernement fédéral, où il a été chargé de l'analyse et de l'élaboration de politiques en rapport avec le droit des affaires et le droit des sociérés. M. Théberge a fait du bénévolat au sein de nombreux organismes œuvrant pour la jeunesse et les personnes handicapées.



Reconnu par le Centre Jules Léger à Ottawa comme patron des personnes sourdes, M. Thébetge a par ailleurs été nommé membre honoraire à vie du Conseil canadien des laboratoires indépendants en remerciement de ses années de travail pour le compre de l'industrie des laboratoires indépendants.

#### J3TA9 IAH JUQ8A

Abdul Hai Patel est membre de la Commission depuis avril 1999. M. Patel a fait ses études primaires en Inde, ses études secondaires à la Barbade et ses études postsecondaires à l'Université York.

M. Patel a reçu l'une des 125 médailles commémoratives que décerne

le gouverneur général pour services à la communauté. Il a également obtenu la Distinction de l'Ontario pour services bénévoles du ministère des Affaires luisers. Membre du comité consultatif avec les minorités de l'Asie



civiques, de la Culture et des Loisirs. Membre du comité consultatif avec les minorités de l'Asie du Sud et de l'Asie occidentale de la police de Toronto, il est coordonnateur du conseil islamique de coordination des imams du Canada. M. Patel est vice-président de l'Association of Employees for Employment Equity de Mew Horizon Solutions Inc., une division de Ontario Power Generation Company et membre du comité provincial sur l'équité et la diversité du Syndicat des travailleurs et travailleuses du secteur énergétique.

#### CHRISTIANE RABIER

Christiane Rabier a été nommée commissaire en avril 1999. Titulaire d'un doctorat de l'université de Mice-Sophia-Antipolis, M<sup>me</sup> Rabier a fait sa maîtrise à l'Université de Montréal et étudié le droit public à l'université de Montpellier. À l'heure actuelle, elle est directrice du département des sciences politiques et vice-doyenne des sciences humaines de l'Université Laurentienne de Sudbury.



Elle joue un rôle actif au sein de la collectivité francophone de Sudbury et a participé à l'élaboration d'un programme visant à encourager les femmes francophones à faire des études postsecondaires. Elle a également été conseillère auprès de TV Ontario dans le domaine de l'éducation permanente. M<sup>me</sup> Rabier a été bénévole pour les Jeux olympiques spéciaux du Canada en 1998 et l'Opétation Mez-rouge en 1999.

#### DUINNAM NNA-HTIQU

Judith Ann-Manning fait partie de la Commission depuis février 2000. M<sup>me</sup> Manning, qui est conseillère en accessibilité des services et en aménagement pour accès facile, a fait des études de criminologie et de droit à l'université de Toronto. Actuellement coordonnatrice du comité d'accessibilité en fauteuil roulant de l'université de Toronto, M<sup>me</sup> Manning a été présidente du cemité consultatif de North York pour les personnes handicapées, présidente comité consultatif de North York pour les personnes handicapées, présidente



du conseil d'administration du Centre for Equality Rights in Accommodation, et vice-présidente du conseil consultatif sur l'accessibilité des transports de la Commission des transports de Toronto. Elle fait également du bénévolat au Centre des sciences de la santé Sunnybrook dans le cadre de la course annuelle pour la recherche.

#### **NALIN KANUCK**

Nalin Kanuck a été nommé commissaire en septembre 1997. Expert-conseil en gestion et en finances, M. Kanuck est aussi conseiller en relations interraciales auprès du conseil de l'éducation de la région de York. Au Sri Lanka, M. Kanuck a été juge de paix, ce qui l'a notamment amené à enquêtet sur des incidents de violation des droits de la personne. Il a aussi été président et directeur général du conseil de développement régional au ministère du directeur général du conseil de développement régional au ministère du



développement régional de ce pays. M. Kanuck a été directeur du National Youth Service Council, qui relevait du bureau du premier ministre du Sri Lanka. Il détient un baccalauréat ès arts arts appliqués (administration publique) de l'université Ryerson, Toronto, un baccalauréat ès arts au Sri Lanka. Docreur honoris causa en administration publique de la City University of au Sri Lanka. Docreur honoris causa en administration publique de la City University of California, M. Kanuck est diplômé du Canadian Institute of Certified Administrative Managers et fellow du British Institute of Management, en Angleterre.

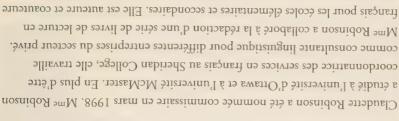
#### MICHEL LALONDE

Après avoir été ces vingt dernières années conseiller municipal et préfet adjoint, Michel Lalonde est aujourd'hui préfet d'Hawkesbury Est. Sa nomination à la Commission remonte à décembre 1997. En 1993, M. Lalonde a été président du conseil des comrés unis de Prescott et Russell. Il a été élu au comité de direction, au comité de planification et au comité des travaux publics du conseil seil. Ancien président du conseil de Prescott Mutual Insurance et du conseil



d'administration de l'Hôpital général de Hawkesbury and District General Hospital Inc., M. Lalonde a reçu le Prix d'excellence du comté de Prescott en 1985. Agriculteur de profession, il joue un rôle actif au sein de la collectivité agricole locale. Il a siégé au conseil d'administration de la commission locale de l'emploi agricole de Glengarry, Prescott et Russell de 1989 à 1996 et présidé le commité d'examen par les pairs du plan d'agriculture écologique de 1993 à 1997.

#### CLAUDETTE ROBINSON





de trois séries d'émissions télévisées nationales en français produites pour la programmation éducative de tfo, la chaîne française de TVOntario, dont une qu'elle a également animée. M<sup>me</sup> Robinson, qui a enseigné des cours d'été à l'Université d'Ottawa, a été engagée comme experte-conseil par le conseil de l'éducation de Halton. Elle a de plus dirigé un cours d'enseilement du français comme langue seconde pour le ministère de l'Éducation.

#### R. P. WILLIAM G. CLIFF

Le Révérend Père Cliff fair partie de la Commission depuis février 1997. Il est pasteur responsable de la collégiale St. John the Evangelist au collège universitaire Huron et aumônier anglican à l'Université Western Ontario, versité Western Ontario, aumônier militaire de la Légion royale canadienne, versité Western Ontario, aumônier militaire de la Légion royale canadienne, aumônier de police ayant le rang d'inspecteur honoraire et membre, au aumônier de police ayant le rang d'inspecteur honoraire et membre, au



Royaume-Uni, du National College of Music. Pervent chanteut et interprète musical, le Révérend Père Cliff a, avec trois de ses collègues, donné de nombreux concerts et effectué trois enregistrements dont ils ont consacré le produit de la vente à la lutte contre la faim dans le monde; ses efforts dans ce sens par l'intermédiaire du Fonds du Primat pour le secouts et le développement mondial, l'organisme de secouts et de développement international de l'Église anglicane du Canada, lui ont valu d'être nommé membre honoraire à vie de cet organisme. Pormé à l'Université Western Ontatio, tant dans sa faculté de musique que ses collèges affiliés, King's Collège et Huron University Collège, le Révérend Père Cliff a éré aumônier de plusieuts congrégations en Ontatio, à savoir à London, Simcoe, Hanovet, Durham, Strathroy et Adelaide.

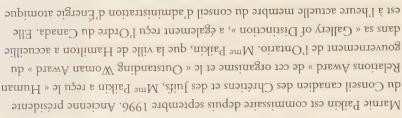
#### **BICHARD MILES**

Avant sa nomination à la Commission en juillet 1992, Richard Miles a travaillé au gouvernement de l'Ontario comme haut fonctionnaire au ministère des Services sociaux et communautaires, au Secrétariat à la condition des personnes handicapées du gouvernement fédéral, et, plus récemment, au sein du Handicapped Action Group Incorporated à Thunder Bay. M. Miles avait été nommé par la ministre des Affaires civiques, de la Culture et des Loisits au Groupe par la ministre des Affaires civiques, de la Culture et des Loisits au Groupe



d'étude sur le Code des droits de la Personne de l'Ontario, dont l'un des rôles avait été de procéder à un examen des activités de la Commission ontarienne des droits de la personne.

#### MARNIE PAIKIN, CM





du Canada Ltée et de Westcoast Energy Inc.

# ANNEXES

# LISTE DES COMMISSAIRES

# KEITH C. NORTON, c.r., B.A., LL.B.

La nomination de Keith Norton au poste de commissaire en chef de la Commission ontarienne des droits de la personne remonte au 18 juillet 1996, Éducateur et avocat de formation, M. Norton a fait des études de droit à l'Université Queen's à Kingston et détient un diplôme en pédagogie de l'Ontario College of Education, aujourd'hui la faculté de l'éducation de l'uni-

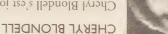


versité de Toronto. Il a exercé la profession d'avocat spécialisé en droit pénal et en droit de la famille à Kingston et il a enseigné aux paliers secondaire et postsecondaire. M. Norton a été tout à tout ministre des Services sociaux et communautaires, adjoint

parlementaire du Trésorier de l'Ontario et ministre de l'Économie et des Affaires intergouvernementales, ministre de la Santé, ministre de l'Éducation et ministre des Collèges et Universités au gouvernement de l'Ontario.

Entre 1981 et 1983, alors qu'il détenait le portefeuille de l'Environnement, M. Norton a été le premiet membre d'un conseil des ministres canadien à témoignet devant un comité du Sénat américain. Tout au long de sa carrière, M. Norton s'est fait le champion des personnes handicapées, des personnes âgées et des personnes défavorisées. Il a également participé à plusieurs entreprises commerciales.

M. Norton est un ancien président du Tribunal des droits de la personne du Canada.



Cheryl Blondell s'est jointe à la Commission en février 1997. Sous-procureure de la Couronne au ministère du Procureur général, elle a travaillé comme avocate de service pour le Régime d'aide juridique de l'Ontario, assurant la défense des accusés dans des causes criminelles. Pendant l'été 1989, M<sup>me</sup> Blondell a fait partie de l'équipe chargée par la Commission ontarienne des droits de la perpartie de l'équipe chargée par la Commission ontarienne des droits de la personne de mettre sur pied une unité des enquêtes sur la discrimination systémique.



#### ІЈ ЯЭТЭЧ

Directeur général du Ming Pao Daily News (édirion de l'Est), Peter Li est membre de la Commission depuis septembre 1997. Il fait partie du comité de développement sino-canadien de la Fondation du Hospital for Sick Children et siège au Asian Business Committee of Metro Toronto, ainsi qu'à l'organisme Junior Achievement (Jeunes Entreprises) de la région de York. Ancien membre du conseil consultatif sur la clientèle asiatique de Canada Trust, il a membre du conseil consultatif sur la clientèle asiatique de Canada Trust, il a



été directeur de Chinese Information and Community Services et vice-président de la Chinese Canadian Advertising, Media and Marketing Association. Enfin, M. Li a été directeur général de l'hôtel Victoria et administrateur de projet du Chinatown Centre.

Le tableau ci-après résume les engagements publics de la Commission pour l'exercice 2002-2003.

#### ENGAGEMENTS POUR 2002-2003 SERVICE

la Commission.

- Mettre en œuvre la phase III de l'initiative à l'intention des personnes autochtones. à l'àgisme et aux autres manifestations de la discrimination fondée sur l'âge. • De concert avec ses partenaires, mener la campagne de sensibilisation du public
- aux activités d'éducation du public suivies d'une évaluation. • Atteindre un taux de satisfaction de 80 % parmi les personnes qui participent
- de ressources à la disposition des enseignantes et enseignants sur le sire Web de • L'enseignement des droits de la personne en Ontario: mettre un plus grand nombre

#### personnes âgées. • Diffuser la politique relative à la discrimination fondée sur l'âge envers les Politiques

- multiples et recueillir les observations des personnes et groupes intéressés. etitom esh rue essanot sanoersqu de de la personne estainly est roting en de • Diffuser le document de travail Une approche intersectionnelle de la discrimination
- de l'éducation en vue d'élaborer un rapport de consultation et des lignes directrices. • Mener des consultations sur la situation des personnes handicapées dans le secteur
- Diffuser le rapport de consultation sur l'accessibilité du transport en commun.
- capées sur les lieux de travail, · Publier des guides en langage clair traitant de la situation des personnes handi-
- traitement égal en matière de services en Ontario. · Poursuivre les activités visant à promouvoir l'élimination des obstacles à un
- · Lancer une initiative relative à la race, à l'origine ethnique et au lieu d'origine.
- et des procédures touchant les droits de la personne sur les lieux de travail. • Mettre au point des outils susceptibles de faciliter la mise en œuvre des politiques
- dans toutes les nouvelles politiques. • Veiller à la prise en considération des obligations internationales du Canada
- décisions rendues en matière de droits de la personne. • Surveiller l'évolution des conventions pertinentes des Nations Unies et des

### de l'accueil à 2,3 minutes communication avec une agente ou un agent de l'Unité des renseignements et Ramener la durée moyenne d'attente avant qu'une personne ne soit mise en

- Réduire le délai moyen de préparation des plaintes à entre 14 et 18 jours.
- · Lorsque les parties consentent à une tentative de médiation, veiller à ce que parties en litige ont consenti à une tentative de médiation. • Obtenir le règlement d'au moins 65 % des plaintes à l'égard desquelles les
- depuis son dépôt jusqu'à la fermeture du dossier. · Réduire à moins de 14 mois la durée moyenne de traitement d'une plainte,

Activités internes Poursuivre la mise en œuvre du plan stratégique pour 2001-2003.

celle-ci aboutisse en l'espace de 3 à 6 mois.

enquête

et accueil

ces droits

promotion de

aux droits de la

Sensibilisation

personne et

Renseignements

Médiation et

#### RÉALISATIONS EN 2001-2002

(au 31.03.2002, sauf indication contraire)

# POUR 2001-2002

SERVICE

Formulation d'observations concernant les rapports que prépare le Canada pour remplir ses obligations aux termes de conventions internationales.

Participation à diverses initiatives visant à explorer en quoi les commissions des droits de saporter en quoi les commissions des droits de sersonne peuvent aider le Canada à respecter chage sur le Web de documents de recherche ou du compre rendu du dialogue sur les politiques, des exposés au Comité sénatorial permanent des droits de la personne, ou encore la formulation et l'adoption par l'Association canadienne des com/nissions et conseil des droits de la personne et sociatus.

Renseignements • Ramener la durée moyenne et accueil d'attente des personnes qui demandent à parlet à une agente

Délai moyen de réponse ramené à 2,3 minutes (durant les 11 mois antérieurs à la grève du Syndicat des employées et employés de la fonction publique de l'Ontario).

Délai moyen de préparation des plaintes ramené à 14 jours, soit un résultat meilleur que l'objectif visé.

demandent à parlet à une agente ou un agent de l'Unité des renseignements et de l'accueil à 2,5 minutes et le délai moyen de

15 et 20 jours.

Taux de règlement des plaintes soumises à une médiation : 73,6 % (comparable aux 73,2 % obtenus au cours de l'exercice précédent).

Règlement grâce aux services de médiation de 1 328 plaintes dans un délai moyen de 4,1 mois en moyenne.

Durée moyenne de traitement d'une plainte, depuis son dépôt jusqu'à la fermeture du dossier, ramenée de 15,4 mois durant l'exercice précédent à 12,2 mois.

• Arriver à régler au moins 65 % des plainres à l'égard desquelles les parties en litige ont consenti à une tentative de médiation.

préparation des plaintes à entre

• Si les parties consentent à une tentative de médiation, veiller à ce que celle-ci aboutisse en l'espace de 3 à 6 mois.

• Ramener de 15,4 à 14 mois la durée moyenne de traitement d'une plainte, depuis son dépôt jusqu'à la fermeture du dossier.

Adoption d'un protocole destiné à appuyer le processus d'enquête en tirant le parti le mieux possible des compétences de l'ensemble du personnel et en faisant davantage appel au personnel de la Direction des services juridiques comme de la Direction des politiques et de l'éducation tout au long du traitement d'une plainte.

• Entamer la mise en œuvre du plan stratégique pour 2001-2003.

Activitéz internes

Médiation

# SERVICE ENGAGEMENTS PRIS RÉALISATIONS EN 2001-2002 (au 31.03.2002, sauf indication contraire) • Autres accomplissements Dublication, de concert avec CCH Canadienne Limitée, du recueil Politique notables.

Mise à jour et rediffusion du document pédagogique L'enseignement des droits de la personne en Ontario.

ontarienne en matière de droits de la personne.

 Produire le rapport de consultation relatif à la discrimination

fondée sur l'âge.

Politiques

Publication le 26 juin 2001 du rapport de consultation Il est temps d'agir : Faire vespecter les droits des personnes àgées en Ontario.

Approbation le 26 mars 2002 d'une politique relative à la discrimination fondée sur l'âge envers les personnes âgées pour diffusion au cours du prochain exercice.

Production de guides provisoires et organisation de deux discussions de groupe, l'une avec des personnes représentant les travailleuses et les travailleurs, l'autre avec des représentantes et représentants du patronat.

Rassemblement et dépouillement des observations recueillies à l'égard des guides provisoires en vue de la mise au point des documents définitifs.

Mise au point d'une stratégie et d'un document de travail en préparation de consultations qui doivent avoir lieu au cours du prochain exercice.

Approbation du rapport de consultation par la Commission en vue de sa diffusion au début de l'exercice 2002-2003.

Diffusion en octobre 2001 du rapport de consultation Les assurances et les droits de la personne.

Mise à jour de la Politique sur la discrimination liée à la grossesse et à l'allaitement maternel.

Conseils réguliers au gouvernement de l'Ontario et à divers organismes du secteur privé sur des questions variées.

Prise en considération des obligations internationales du Canada dans les activités de la Commission relatives à la discrimination fondée sur l'âge, l'approche intersectionnelle de la discrimination, le handicap, l'accessibilité du transport en commun, les droits sociaux et économiques ou encore la grossesse et l'allaitement maternel.

> Lancer des consultations sur les droits des personnes handicapées dans le secteur de l'éducation.

uns et des autres plus en détail.

droits et les responsabilités des

en langage simple, expliquant les

employés et employées, de même qu'un guide plus général, toujours

l'emploi pour les employeurs et les

simple sur les droits des personnes

handicapées dans le domaine de

• Elaborer des guides en langage

 Élaborer le rapport de consultation sur l'accessibilité des services de transport en commun.

sur le plan des politiques:

 Veiller à ce que les nouvelles politiques tiennent compre des obligations internationales du Canada.

Rapport annuel 2001-2002

# CADRE DE RESPONSABILISATION

La Commission a présenté son cadre de responsabilisation dans chacun de ses quatre derniers rapports annuels. Ce cadre vise à préciser les objectifs que la Commission se fixe pour l'exercice à venir et à rendre compte de ses accomplissements par rapport aux objectifs établis antérieurement.

Le tableau ci-après résume les accomplissements de la Commission durant l'exercice

2001-2002.

SERVICE

# REALISATIONS EN 2001-2002 (au 31.03.2002, sauf indication contraire)

Début de planification d'une campagne de sensibilisation du public à l'âgisme et aux autres manifestations de la discrimination fondée sur l'âge.

Partenatiats forgés avec divers organismes communautaires/en vue de l'élaboration et de la conduite de cette campagne.

Mise en œuvre de la phase 2 en collaboration avec trois organismes, Grand River Employment and Training (GREAT), Ontario
Federation of Indian Friendship Centres et le
Mative Canadian Centre of Totonto (MCCT).

Organisation de deux journées consécutives de formation concernant cette initiative à l'intention du personnel de la Commission et de NCCT.

Exécution d'un projet pilote avec GREAT et NCCT, à savoir l'embauche d'un agent de liaison pour les droits de la personne chargé d'éduquer le public et de répondre à ses questions.

Réception d'un compte-rendu de ce projet pilote dressé par GREAT

Publication de six nouveaux dépliants bilingues rédigés en langage clair, dont cinq portant sur les droits des Ontariennes et des Ontariens et l'embauche, le harcèlement sexuel, l'orientation sexuelle, le harcèlement racial et la grossesse (y compris l'allaitement maternel ou « naturel »), et un sixième portant sur la Commission.

Taux de satisfaction atteint supérieur à 83 %.

# POUR 2001-2002

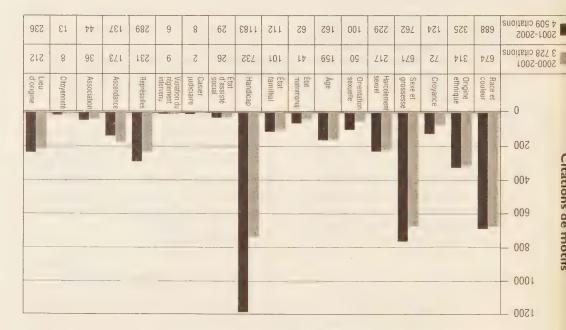
• Mener une nouvelle campagne de sensibilisation du public. Sensibilisation aux droits de la personne et promotion de ces droits

• Mettre en œuvre la phase 2 de l'initiative à l'intention des personnes autochtones.

 Rendre l'information diffusée par la Commission plus accessible par la publication de documents d'une seule page sur les principaux aspects du Code.

• Arteindre un taux de satisfaction de 80 % parmi les personnes qui participent aux activités d'éducation du public.

Importance proportionnelle de chaque motif de discrimination illicite par rapport à toutes les citations de motifs



# ACTIVITÉS INTERNES

Madame Andrea Broadley est entrée en fonction comme directrice générale de la Commission le 31 octobre 2001.

La directrice générale est chargée de diriger les affaires opérationnelles de la Commission. Son bureau assure la liaison administrative avec le gouvernement, par l'intermédiaire du bureau du sous-ministre des Affaires civiques. L'une de ses fonctions clés consiste à établir l'orientation attatégique de la Commission au moyen de la définition d'objectifs à long terme, de l'établissement de plans d'activités annuels, de l'approbation des budgets et de la gestion des ressources humaines.

L'initiative de planification stratégique entreprise à l'automne 2000 s'est soldée par la mise en œuvre de plusieurs mesures visant à améliorer les services fournis par la Commission. L'une de ces mesures a été l'adoption d'un protocole pour l'essentiel destiné à appuyer le processus d'enquêre de la Commission en tirant le meilleur parti possible des compétences de l'ensemble de son personnel. Le protocole prévoit une plus grande intégration des fonctions liées aux enquêtes, y compris des interventions plus soutenues du personnel de la Direction des services juridiques comme de la Direction des politiques et de l'éducation tout au long du traitement d'une plainte, afin de continuer à rehausser la qualité et la rapidité de la traitement d'une plainte, afin de continuer à rehausser la qualité et la rapidité de la traitement d'une plainte, afin de continuer à rehausser la qualité et la rapidité de la

gestion des cas.

facteurs biomédicaux, sociaux ou technologiques entrant en jeu et met aussi l'accent sur la dignité humaine, le respect et le droit à l'égalité. Une telle interprétation vaste et libérale, d'ailleurs parfaitement compatible avec le Code, qui englobe les affections passées, présentes et présumées, est déjà celle retenue pat la Commission dans sa publication Politique et directives sur le handicap et l'obligation d'accommodement (ou d'adaptation).

L'opinion que les membres du public se font de la capacité de la Commission de s'acquirter des fonctions découlant de son mandat influe aussi sur leur recours aux services d'accueil, de médiation et d'enquête de la Commission. Tout aussi importante pour l'avancement des droits de la personne que les fonctions d'application du Code dont se chargent ces services est, aux yeux de la Commission, la fonction de promotion des droits de la personne qui représente l'autre aspect de son mandat et dont elle s'acquitte par l'intermédiaire de son service de renseignements et de ses activités de recherche, de consultation, d'élabolation de politiques, de communication et d'éducation du public.

Enfin, la Commission n'est pas seule responsable de la protection et de la promotion des droits de la personne : d'autres intervenants ont un rôle à jouer à cet égard, y compris le gouvernement, les grands employeurs du secteur public, notamment dans le domaine de l'éducation et de la santé, la magistrature, les médias, divers organismes communautaires et autres, voire même les particuliers. Leurs actions à cet égard et la nature des questions touchant les droits de la personne qui dominent tout à tout le débat public se ressentent aussi sur la charge de cas de la Commission.

Plusieurs événements marquants intervenus durant l'exercice 2001-2002, tels que la mise en application par la Commission de ses nouvelles Politique et directives sur le bandicap et l'obligation d'accommodement (ou d'adaptation), ses consultations concernant l'accessibilité des transports en commun et la discrimination fondée sur l'âge, de même que l'adoption par l'Assemblée législative de l'Ontario de la Loi de sensibilisation sur les personnes handicapées de l'Ontario, ont eu un effet positif en matière de sensibilisation aux questions de droits de la personne touchant les Ontariennes et les Ontariens handicapées, ce qui pourrait contribuer à expliquer la hausse du nombre de plaintes déposées.

D'autres facteurs pouvant expliquer la hausse constatée sont les efforts déployés par la Commission en matière de dissémination de l'information, de même que sa participation à diverses activités d'éducation du public, par exemple la conférence annuelle et les rencontres régionales de l'association des professionnelles et professionnelle et les rencontres régionales de l'Ontatio (Human Resources Professionals Association of Ontatio ou HRPAO).

Par ailleurs, plusieurs causes défendues devant la commission d'enquête constituée aux termes du Code ou portées en appel devant les tribunaux, notamment Turnbull et al u. Famous Players Inc et Brillinger and the Canadian Lesbian and Gay Archives v. Imaging Excellence Inc. et al, ont eu un grand retentissement, attirant l'attention des médias et donc du grand public sur d'importantes questions telles que l'obligation de tenit compte des besoins des personnes handicapées et le droit de toute personne à un traitement égal en matière de services sans discrimination fondée sur l'otientation sexuelle.

La multiplication des plaintes pour discrimination fondée sur l'existence d'un handicap est peut-être aussi attribuable à une acceptation élargie de ce qui constitue un handicap. Plusieurs arrêts récents de la Cour suprême du Canada<sup>2</sup> ont confirmé que l'analyse d'une déficience doit portet sur la réaction de la société à l'existence réelle ou présumée d'un handicap qui crée en quelque sorte un « handicap social » et donc sur les effets d'une distinction, exclusion ou préférence, plutôt que sur la cause ou l'origine précise du handicap.

Il convient en conséquence d'interpréter le mot « handicap » en tenant compre de l'élément subjectif de la discrimination fondée sur ce motif, qui peut tout autant découler de perceptions, de mythes et de stéréotypes que de l'existence de limitations fonctionnelles réelles. Cette approche tient compte de l'évolution des

<sup>2.</sup> Accessibles sur Internet: Québec (Commission des droits de la personne et des droits de la jeunesse) c. Montréal (Ville); Québec (Commission des droits de la personne et des droits de la jeunesse) c. Boisbriand (Ville), 2000 CSC 27 (3 mai 2000), www.lexum.umontreal.ca/csc-sce/fr/pub/2000/vol1/html/2000/cs1 0665.html; Granovsky c. Canada (ministre de l'Emploi et de l'Immigration), 2000 CSC 28 (18 mai 2000), www.lexum.umontreal.ca/csc-sce/fr/pub/2000/vol1/html/2000/cs1 0703.html.

# Hausse du nombre de plaintes déposées

Conformément au Code, la Commission est tenue d'accueillir toute plainte qu'une personne peut souhaiter déposer. Durant l'exercice 2001-2002, la Commission a reçu 2 438 nouvelles plaintes représentant une hausse générale du nombre de plaintes ayant trait à la quasi-totalité des motifs de discrimination illicites. Ce total est supérieur de 663 plaintes (ou 37,6 %) aux 1 775 plaintes recueillies durant l'exercice précédent, 2000-2001. Par le passé, le nombre total de plaintes était toujours resté en-dessous de 2000, le total moyen des cinq précédents exercices se situant à 1 754 plaintes.

Etant donné qu'une plainte peut citer plus d'un seul motif de discrimination illicite, une ventilation des motifs cités dans l'ensemble des nouvelles plaintes permet de mieux comprendre la hausse du nombre de plaintes déposées en 2001-2002. Le graphique ci-après fait ressortir que l'existence d'un handicap occupe une place plus dominante que jamais parmi les motifs cités dans les plaintes déposées, passant de 19,6% des 3728 citations de motifs en 2000-2001 à 26,2% des 4509 citations de motifs comprabilisées en 2001-2002. Si l'on examine l'écart dans le nombre total de citations de motifs d'une année sur l'autre, il apparaît clairement que le nombre de fois où l'existence d'un handicap a été citée comme motif de discrimination illicite explique à lui seul 57,7% de la hausse des citations de motifs.

Cette même tendance à la hausse est reflétée dans le nombre de nouvelles plaintes déposées citant l'existence d'un handicap comme motif de discrimination illicite, qui sont passées de 41,2 % en 2000-2001 à 48,5 % en 2001-2002.

Il semblerait d'ailleurs que cette tendance n'existe pas qu'en Ontario. Un petit sondage effectué par la Commission en janvier 2002 auprès d'autres commissions des droits de la personne du Canada a révélé que cinq des six commissions dont les données étaient comparables à celles de la Commission ontarienne des droits de la personne avaient elles aussi entegistré une hausse du nombre de nouvelles plaintes citant l'existence d'un handicap comme motif de discrimination illicite.

La Commission a également constaté une hausse disproportionnée du nombre de fois que l'orientation sexuelle a été citée comme motif de discrimination illicite dans les nouvelles plaintes, celui-ci ayant doublé entre 2001-2002 par rapport à 2000-2001, passant de 50 à 100.

Bien qu'il soit impossible de tirer de conclusion catégorique quant à la raison de la hausse générale du nombre de plaintes déposées ou encore de la hausse disproportionnée du nombre de plaintes citant l'existence d'un handicap ou l'orientation sexuelle comme motifs de discrimination illicites, il ne fait aucun doute que plusieurs facteurs ont pu entrer en jeu.

# SERVICES D'ENQUÊTE

La Commission a ramené le délai moyen entre l'ouverture et la clôture d'un dossier de 15,4 à 12,2 mois au cours du dernier exercice. La durée de traitement médiane s'est, elle, allongée légèrement, passant de 7 mois durant l'exercice précédent à 8 mois.

Ni la hausse du nombre de plaintes déposées auprès de la Commission, ni celle du nombre de plaintes renvoyées à la commission d'enquête, ne s'est toutefois ressentie outre mesure sur l'âge des dossiers en cours de traitement. Au 31 mars 1002, cet âge moyen était de 11 mois, en légère augmentation seulement par rapport aux 10,4 mois atteints en 2000-2001, et ce malgré le dépôt de 37 % de plaintes de plus qu'auparavant. L'âge médian des dossiers en cours de traitement était de 8 mois, contre 7 mois en 2000-2001.

Ces chiffres montrent que la Commission a su rester fidèle à son engagement de limiter les dossiers en cours de traitement à des affaires courantes (autrement dit, des plaintes déposées depuis moins de L2 mois), et ce malgré la nette hausse (plus 37 %) du nombre de plaintes dont elle a été saisie en 2001-2002 par rapport à l'exercice précédent.

Compre tenu de la hausse du nombre de plaintes dont elle a été saisie, la Commission n'a, pour la première fois en cinq ans, pas fermé davantage de dossiers qu'elle n'en a ouverts. Méanmoins, la Commission a fermé 1 932 dossiers, pratiquement le même nombre que l'année d'avant (1 941). Elle en aurait fermé davantage, si ce n'avait été de la grève du Syndicat des employés de la fonction publique de l'Ontario qui a dématré le 13 mats 2002, deux semaines avant la fin de l'exercice : mats est traditionnellement le mois au cours duquel la Commission ferme le plus grand nombre de dossiers.

En 2001-2002, la Commission a ouvert 2 438 dossiers de plaintes et en a fermé 1 932. Les dossiers en cours de traitement par la Commission au 31 mars 2002 étaient au nombre de 2 300.

Enfin, au cours du dernier exercice, la Commission a renvoyé 60 plaintes à la commission d'enquête constituée pour l'application du Code des droits de la personne.

# DIRECTION DE LA MÉDIATION ET DES ENQUÊTES

# SERVICES DE RENSEIGNEMENTS ET D'ACCUEIL

Unité des renseignements et de l'accueil est le premier point de contact du public avec la Commission. Les personnes qui appellent ces services peuvent y obtenit des renseignements sur les droits de la personne en général, la marche à suivre pour déposer une plainte et d'autres aspects de l'application du Code des droits de la personne. En 2000-2002, l'Unité à reçu 170 145 appels. Les agentes et agents des services

de renseignements ont pris 48 732 appels des 64 154 appels où la personne au bout de la ligne avait choisi l'option de parlet à quelqu'un de vive voix. En moyenne (au cours des 11 premiers mois de l'exercice 2001-2002!), les agentes et agents ont été en mesure de prendre la ligne des personnes en attente en l'espace de 2,3 minutes. L'Unité a envoyé 4 618 questionnaires et reçu 2 978 questionnaires dûment remplis et complétés en retour.

Durant l'exercice écoulé, 2 438 plaintes officielles ont été déposées auprès de la Commission, soit 663 (ou 37 %) de plus qu'en 2000-2001.

#### SERVICES DE MÉDIATION

La médiation repose sur un mécanisme formel, mais volontaire, proposé aux parties à une plainte en vue de tenter de résoudre leurs différends aux premières étapes du processus de traitement d'une plainte. Durant l'exercice écoulé, 73,6 % des plaintes ayant fait l'objet d'une médiation ont trouvé un règlement grâce à ce mécanisme, contre 73,2 % en 2000-2001, ce qui équivant à 1 328 dossiers fermés grâce aux services de médiation (soit une hausse de 7 % pat rapport à l'exercice précédent).

I. La Commission a subi une intetruption de travail lorsque le Syndicat des employés et employées de la fonction publique de l'Ontario s'est mis en grève le 13 mars 2002. Vu qu'elle n'a pas été en mesure d'assuret ses services habituels de renseignements et d'accueil pendant la durée de la grève, ce chiffre est basé sur la période de 11 mois du let avril 2001 au 28 févriet 2002.

matière de services sans discrimination ni harcèlement. Le seul plafond établi par cet alinéa concerne l'indemnisation financière envisageable pour dommages moraux : dans pareil cas, les dommages-inrérêts ne doivent pas dépasser 10 000 \$ et la commission d'enquêre ne peut en ordonner le paiement qu'à condition d'être convaincue que l'atteinte aux droits a été volontaire ou commise avec insouciance. En l'espèce, la commission d'enquêre a ordonné le paiement de 15 000 \$ de dommages-inrérêts pour la perte consécutive à l'atteinte aux paragraphes 2(1) et 2(2) du Code et de 10 000 \$ pour dommages moraux.

Situation actuelle: La décision de la commission d'enquête n'a pas été portée en appel et la Commission fait le nécessaire pour s'assurer du respect de l'ordonnance de la commission d'enquête.

contre, elle a estimé que l'exigence selon laquelle les personnes accompagnant une spectatrice ou un spectateur en fauteuil roulant doivent signer un registre pour obtenir un billet d'admission gratuit n'était pas contraire au Code, vu qu'il leur était possible de refuser d'indiquer leur nom et leur numéro de téléphone sans pour autant être privées de billet gratuit. De plus, la commission d'enquête a constaté que les autres bénéficiaires de billets gratuits étaient également tenus de signer le registre, autrement dit que les accompagnatrices et accompagnateurs de personnes en fauteuil roulant n'étaient pas soumis à une politique distincte.

Unne des mesures de redressement ordonnées par la commission d'enquête était que Famous Players fasse le nécessaire pour graduellement rendre les salles de cinéma visées par la plainte accessibles aux personnes en fauteuil roulant. La commission d'enquête a par ailleurs ordonné que tout film projeté dans les salles inaccessibles devait aussi, faute de l'être déjà, être projeté dans une salle facile d'accès si une spectatrice ou un spectateur en fauteuil roulant en faisait la demande. Enfin, la gramme de formation des membres de son personnel, afin de les sensibiliset aux besoins des personnes handicapées. Elle a ordonné à Famous Players le versement de dommages-intérêtes à chacune des parties plaignantes situés entre 8 000 \$ et 10 000 \$ pour atteinte à leurs droits, plus 2 000 \$ de dommages-intérêtes à l'une des parties plaignantes pour souffrance morale causée par la conduite insouciante de l'intimé. Situation actuelle: Certaines questions touchant la conduite insouciante de l'intimé.

# Fuller v. Daoud and Desquilbet Commission d'enquête - décision rendue le 17 août 2001

suspend à la Commission d'enquête.

Le plaignant, qui est Moit, est devenu locataire des intimés lotsqu'il a loué d'eux un appartement de sous-sol en mats 1999.

Peu après qu'il ait emménagé dans cet appartement, le plaignant a été sujet à des entrées non autorisées, à du harcèlement racial et au bruit excessivement lourd de pas sur son plafond (le plancher de l'intimé). Le plaignant a finalement été expulsé de son logement suite à de fausses accusations.

Décision de la commission d'enquête: La commission d'enquête a conclu que le plaignant avait été victime de harcèlement et de discrimination à cause de sa race. La commission d'enquête a adopté une approche globale de l'évaluation du montant des dommages-intérêts payables au plaignant. Elle a conclu qu'à première vue, l'alinéa 41(1) b) du Code ne plafonne pas les dommages-intérêts dont il lui est possible d'ordonnet le paiement en cas d'atteinte au droit à un traitement égal en

nelles d'amorce graduelle qui ne sont pas prévues par leur convention collective. Les employés et leur syndicat ont fait valoir que cette omission constituait une forme de discrimination fondée sur l'existence d'un handicap en contravention du Code.

Le premier arbitre avait conclu qu'un régime d'assurance dont les prestations sont limitées aux employés atteints d'une lésion attribuable à un incident particulier ne portait pas atteinte au Code. Le second arbitre a, lui, décidé que les employés atteints d'une lésion d'amotre graduelle vivent la même diminution de leurs capacités que les employés atteints d'une lésion attribuable à un incident particulier, et que les uns comme les autres ont donc pareillement besoin de prestations de remplacemns comme les autres ont donc pareillement besoin de prestations de remplation en comme les autres ont donc pareillement du grief fondée sur l'existence d'un une forme de discrimination envers les auteurs du grief fondée sur l'existence d'un handicap, en contravention du paragraphe 5(1) du Code.

Décision de la Cour divisionnaire: La Commission est intervenue pour le compre du syndicat. Dans une décision unanime, la Cour divisionnaire a accordé au syndicat l'annulation de la sentence arbitrale défavorable et rejeté l'appel du Jockey Club. La Cour divisionnaire a confirmé la décision du second arbitre.

Situation actuelle: La décision de la Cour divisionnaire n'a pas été portée en appel.

# COMMISSION D'ENQUÊTE

Turnbull, Chapman, Fragale, Wong-Ward, Macaulay v. Famous Players Inc., Commission d'enquête – décision rendue le 10 septembre 2001

Les cinq parties plaignantes, qui se déplacent en fauteuil roulant, ont allégué que Famous Players contrevenait au Code parce que ses salles de cinéma ne sont pas roules accessibles aux personnes comme elles, parce que les personnes en fauteuil pas aménagées sans obstacle et parce que les personnes qui accompagnent les spectateurs et spectatrices en fauteuil roulant dans ses salles accessibles doivent signet un registre si elles veulent obtenit un billet d'admission gratuit.

Décision de la commission d'enquête: La commission d'enquête a conclu que le défaut de Famous Players de faire en sorte que toutes ses salles soient aménagées sans obstacle constituait une contravention prima facie de l'article I du Code. Elle a conclu qu'en l'espèce, le préjudice injustifié causé par les mesures d'adaptation aux besoins des personnes handicapées n'était pas une défense admissible et l'a donc rejetée. En ce qui a trait à la politique d'interdiction d'accès, la commission d'enquête a également rejeté la défense basée sur des considérations de santé et de sécutité. Par a également rejeté la défense basée sur des considérations de santé et de sécutité. Par

Décision de la commission d'enquête (première étape) : La commission d'enquête a conclu que le Code protège la Canadian Lesbian and Gay Archives contre toute discrimination fondée sur l'orientation sexuelle. La commission d'enquête a déterminé que les organisations comme les Archives sont tellement imprégnées de l'identité et du caractère particulier de leurs membres, ou représentent si nettement un groupe de personnes identifié par un motif illicite de discrimination prévu pat le Code, qu'elles ne peuvent être séparées de leurs membres et qu'elles endossent elles-mêmes les caractéristiques faisant l'objet de mesures de protection.

La commission d'enquête a donc conclu que tant Ray Brillinger que les Archives s'étaient vus refuser des services d'impression en violation de l'article 1 du Code. Elle a conclu que Ray Brillinger, en raison de son association avec les Archives avait été indirectement victime de discrimination en tant que membre des Archives et en tant que président de l'organisation à l'époque. La commission d'enquête a conclu que les Archives avaient été victimes de discrimination directement et par association.

Décision de la commission d'enquête (seconde étape) : La commission d'enquête

a ordonné aux mis en cause d'offrir des services d'impression aux gais et aux lesbiennes comme aux organismes qui existent pour leur avantage. Elle a accepté la concession de la Commission et du plaignant qu'une telle ordonnance allait à l'encontre de la liberté de religion que lui garantit l'alinéa 2 a) de la Charte canadienne des droits et libertés, mais elle a conclu que cette atteinte à sa liberté était raisonnablement justifiée aux termes de l'article 1 de la Charte.

La commission d'enquête a ordonné à M. Brockie et à Imaging Excellence de payet à Ray Brillinger et aux Archives des dommages-intérêts généraux de 5 000 \$, montant jugé nécessaire pour souligner la gravité de la violation de droits commise.

Situation actuelle: La partie intimée a porté la décision en appel devant la Cour divisionnaire. La Cour divisionnaire a statué de façon préliminaire que la commission d'enquête n'avait pas compétence pour joindre Canadian Lesbian and Gay Archives à l'instance comme partie plaignante. Elle a toutefois décidé que la suppression des Archives comme partie à l'instance ne suffisait pas à réglet l'appel. Les deux côtés ont présenté leurs arguments et attendent désormais la décision de la Cour divisionnaire.

# Service Employees International Union, Local 528 v. Ontario Jockey Club Cour divisionnaire – décision rendue le 8 novembre 2001

Lorganisme connu sous le nom Ontario Jockey Club et le syndicat Service Employees International Union ont demandé la révision judiciaire des décisions contradictoires de deux arbitres. Lasfaire concerne deux employés atteints de lésions profession-

voiture jusqu'au domicile de B ce soir-là, il n'avait pris aucune part à la confrontation. Le lundi, lorsque A est allé à son travail comme d'habitude, B l'a renvoyé.

Décision de la commission d'enquête: La commission d'enquête a conclu qu'il était un fait établi que A était capable de séparer sa vie privée de sa vie professionnelle. Elle a ensuire conclu qu'en l'absence de toute autre explication, A avait été renvoyé en raison des actions de sa conjointe et des accusations portées par sa fille, et que cette situation constituait une discrimination fondée sur l'état familial ou et que cette situation constituait une discrimination fondée sur l'état familial ou matrimonial.

Décision de la Cour divisionnaire : La Cour divisionnaire a confirmé ces conclusions de fait, mais elle a rejeté la conclusion selon laquelle les faits relevaient d'une discrimination fondée sur l'état familial ou matrimonial, malgré les liens de parenté par alliance entre les parties.

Décision de la Cour d'appel: La Cour d'appel a accueilli l'appel interjeté par la Commission, étant d'accord avec l'argument de celle-ci suivant lequel les morifs illicites de discrimination que sont l'état matrimonial et l'état familial englobent non seulement le fait ou non d'être marié et d'avoir des enfants, mais aussi l'identité des conjoints et des enfants.

Situation actuelle: Les intimés ont formé un pourvoi en appel devant la Cour Suprême du Canada. Les deux parties ont déposé leur preuve et attendent l'atrêt de la Cour.

### COUR DIVISIONNAIRE

Brillinger and the Canadian Lesbian and Gay Archives v. Imaging Excellence Inc. et al. Commission d'enquête – décisions rendues le 29 septembre 1999 et le 24 février 2000

Le plaignant, Ray Brillinger, a demandé des services d'impression – enveloppes, papier à en-tête et cartes de visite – à la partie intimée, Imaging Excellence Inc., au nom de Canadian Lesbian and Gay Archives (les «Archives»). Le président de la société Imaging Excellence, Scott Brockie, a refusé de fournir les services demandés en raison de ses croyances religieuses. Scott Brockie a fait valoit que l'homosexualité est contraire aux enseignements de la Bible. M. Brockie a fait valoit que son droit à la liberté de religion en vertu de l'alinéa 2 a) de la Charte canadienne des droits et libertés (la Charte) justifiait son refus de fournir les services demandés.

L'audience s'est déroulée en deux étapes : la première étape a porté sur la violation du Code et la seconde, sur le moyen de défense fondé sur l'alinéa 2 a) de la Charte.

a été accordée, mais sur le seul point de savoir si la commission d'enquête avait eu tort d'ordonner la réintégration de M. Naraine, compte tenu de la décision arbitrale antérieure confirmant son congédiement.

Commission de sa plainte pour non-respect des dispositions du Code. M. Naraine : en conséquence, M. Naraine n'avait eu d'autre choix que de saisir la tence concurrente n'existait pas à l'époque où l'arbitre a entendu le grief de traiter une plainte, mais de s'en remettre sur un autre tribunal. L'actuelle compépersonne ayant eu pour effet de permettre à la Commission de décider de ne pas Loi sur les relations de travail et aux modifications apportées au Code des droits de la plaintes déposées par M. Naraine étaient antérieures à la fois à cette révision de la pas plus qu'elle ne limitait la compétence de la Commission. En l'espèce, les a estimé que cette modification ne donnait aucune compétence exclusive à l'arbitre, droits de la personne ainsi que les autres lois ayant trait à l'emploi », la Cour d'appel arbitres ont aujourd'hui le droit « d'interpréter et d'appliquer les lois ayant trait aux que, suite à une modification apportée en 1992 à la Loi sur les relations de travail, les arbitrale antérieure confirmant le congédiement du plaignant. Tout en reconnaissant aux droits de la personne et pour statuer sur celle-ci sans être liée par la décision d'enquête avait compétence pour entendre la plainte de M. Nataine pour atteinte Décision de la Cour d'appel : La Cour d'appel a conclu que la commission

La Cour d'appel a conclu par ailleurs qu'imposer la réintégration du plaignant dans les circonstances n'était pas défendable. Elle a annulé à la fois la décision de la Cour divisionnaire et l'ordonnance de la commission d'enquête en ce qui a trait à la réintégration de M. Maraine. Sur tous les autres points, la Cour d'appel a confirmé la décision de la commission d'enquête.

Situation actuelle: La Commission et le plaignant ont demandé l'autorisation d'en appelet à la Cour suprême du Canada de la décision de la Cour d'appel de refuser la réintégration du plaignant.

# OHRC v. Mr. A and Mr. B, Mr. C and D Ltd. Cour d'appel de l'Ontario – décision rendue le 14 novembre 2000

Le plaignant A était employé de D Ltd. B était vice-président et directeur de D Ltd, superviseur direct et frère de la conjointe de A (autrement dit, beau-frère de A). D Ltd était la propriété de C, qui était lui aussi un frère de la conjointe de A.

A a travaillé pour D Led pendant 26 ans sans incident, Juste avant son congédiement, sa fille a déclaré, en sa présence et en présence de sa conjointe, qu'elle s'était souvenue en cours de thérapie que B l'avait sexuellement agressée quand elle était enfant. La conjointe de A et sa fille ont confronté B (le frère de la conjointe de A) chez lui un vendredi soir. Bien que A ait conduit sa conjointe et sa fille en

# DIRECTION DES SERVICES JURIDIQUES

En 2001-2002, la Direction des services juridiques a reçu les décisions suivantes: 6 décisions et 30 règlements de la commission d'enquête, 6 décisions résultant d'un recours en révision, 10 décisions en appel et un arrêt de la Cour suprême du Canada. À la fin de l'exercice 2001-2002, la Direction des soprisons intributes.

A la fin de l'exercice 2001-2002, la Direction des services juridiques s'occupair des affaires suivantes : 87 plaintes renvoyées à la commission d'enquête, 14 recours en révision, 8 décisions portées en appel et un pourvoi devant la Cour suprême du Canada.

Les pages qui suivent présentent les grandes lignes de quelques-unes des affaires et des décisions qui ont marqué l'exercice écoulé.

# **APPELS**

# Ford Motor Co. of Canada v. Ontario (Human Rights Commission), Cour d'appel de l'Ontario – décision rendue le 14 décembre 2001

Le plaignant, Mike Maraine, a travaillé neuf ans comme électricien chez Ford. Pendant cette période, il a constamment été l'objet de harcèlement racial. Ce climat de travail causait de plus en plus de frustration à M. Maraine, qui a acquis au fil des années un important dossier disciplinaire, incluant des incidents d'insubordination. Il a été congédié en 1985.

Décision de la commission d'enquête: La commission d'enquête a conclu que le licenciement de M. Naraine était injustifié, du fait que Ford avait négligé de tenit compte des répercussions sur M. Naraine de l'atmosphère de travail empoisonnée. Ford a porté la décision de la commission d'enquête en appel devant la Cour divisionnaire.

Décision de la Cour divisionnaire: Dans une décision unanime, la Cour divisionnaire a rejeré l'appel. Sur la question du délai, la Cour a fair remarquer que la commission d'enquête, après avoir entendu tous les éléments de la preuve, était en excellente position pour déterminer si Ford subirait des préjudices. La Cour s'est par ailleurs rangée à l'avis de la commission d'enquête selon lequel il convient de réexaminer les questions traitées par l'arbitre du travail pour trancher les questions relatives aux droits de la personne. La Cour a en outre conclu que la commission d'enquête était en droit d'exclure comme non pertinent tout élément de preuve relatif à des incidents survenus après le congédiement de M. Naraine par Ford. Enfin, la des incidents autvenus après le congédiement de M. Naraine par Ford. Enfin, la Ford responsable du harcèlement racial, parce qu'elle n'a rien fait pour mettre fin Pord responsable du harcèlement racial, parce qu'elle n'a rien fait pour mettre fin aux propos raciaux et aux graffitis à son usine de Windsor. Ford a demandé l'autorisation d'en appeler de la décision de la Cour divisionnaire. L'autorisation d'appel lui sation d'en appeler de la décision de la Cour divisionnaire. L'autorisation d'appel lui sation d'en appeler de la décision de la Cour divisionnaire. L'autorisation d'appel lui

- le cinquième rapport du Canada sur la Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes des Nations Unies;
- le treizième rapport du Canada sur la Convention sur l'élimination de toutes les formes de discrimination raciale des Nations Unies;
- le quatorzième rapport du Canada sur la Convention sur l'élimination de toutes les formes de discrimination raciale des Nations Unies.

# Association canadienne des commissions et conseil des droits de la personne

L'assemblée générale de l'Association canadienne des commissions et conseil des droits de la personne (ACCDP) réunit chaque année des représentantes et représentantes de rous les organismes canadiens des droits de la personne. Lors de l'assemblée générale annuelle de 2001, plusieurs membres du personnel de la Commission ont présenté des exposés sur des sujets variés. La Commission a par ailleurs participé à l'élaboration et à l'adoption par l'ACCDP de deux résolutions sur les droits sociaux et économiques.

La première de ces résolutions traduit la position de l'ACCDP selon laquelle il y autait lieu d'ajouter le statut social aux motifs illicites de discrimination prévus par les lois visant à protéget les droits de la personne au Canada et la seconde confirme sa détermination à voir à ce que les organismes canadiens des droits de la personne accordent toute l'attention possible aux droits sociaux et économiques dans le cadre de l'exécution de leut mandat.

Plusieurs personnes travaillant au sein des divers organismes canadiens des

droits de la personne se réunissent aussi régulièrement par téléconférence pour échanger de l'information et planifier leurs activités d'éducation du public et d'élaboration des politiques. Grâce à de l'aide en provenance du Programme des droits de la personne de Patrimoine Canada, le groupe de responsables de l'éducation du public prévoit une réunion de trois jours afin d'approfondir leur planification commune des activités qui se prêtent à une exécution en partenariat.

# Délégations et visites de l'étranger

Durant l'exercice écoulé comme les autres années, la Commission a consacré une partie de son temps à la promotion des droits de la personne à l'échelle mondiale. Ainsi a-t-elle accueilli des représentantes et des représentants de divers organismes et groupes œuvrant à la défense des droits de la personne en Éthiopie, en Nouvelle-Alande, au Ghana, en Afrique du Sud, au Viêtnam et au Japon.

ministère en 2000 traitant de l'égalité des chances, de la discrimination et du harcèlement sur le lieu de travail;

- en septembre 2001, la Commission a adressé une lettre à la ministre de l'Éducation, lançant un appel à la coopération et offrant son soutien pour faire face à tout incident de harcèlement ou de discrimination dans les écoles suite aux attentats terroristes perpétrés aux États-Unis;
- la Commission est intervenue auprès d'un employeur en apprenant que celui-ci appliquair une politique inacceptable de dépistage de l'alcool et de la drogue et que ses formulaires de demande d'emploi comportaient des questions interdites par le Code. Suite à cette intervention, l'employeur en question a modifié sa politique et ses procédures de manière à se conformer au Code et aux politiques de la Commission;
- l'adoption par l'Assemblée législative d'une modification législative rendant dans certaines circonstances obligatoires des analyses de sang visant à dépister des maladies infectieuses a fait l'objet d'une lettre de la Commission au ministre de la Santé et des Soins de longue durée;
- en mars 2002, la Commission a présenté un mémoire détaillé au ministère des Affaires municipales et du Logement soulignant la nécessité d'une révision des exigences de la Loi de 1992 sur le code du bâtiment en matière d'aménagement sans obstacle, afin de favoriser l'accessibilité aux personnes handicapées des bâtiments. Ce mémoire décrit les priorités en matière de changement dans ce domaine, de même que les principes de droits de la personne qu'il y autait lieu d'enchâsser dans un code du bâtiment révisé.

#### INITIATIVES NATIONALES ET INTERNATIONALES

#### Observations de la province de l'Ontario

La Commission contribue à la formulation d'observations concernant les rapports que prépare le Canada pour remplir ses obligations aux retmes de conventions internationales traitant des droits de la personne et de diverses autres initiatives nationales et internationales. En 2001-2002, la Commission a préparé des observations sur les rapports suivants:

- l'ébauche par les Nations Unies d'un protocole facultatif à la Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants;
- Un monde digne des enfants, le mémoire produit par l'Ontatio comme apport aux contributions du Canada à la session extraordinaire de l'assemblée générale des Nations Unies consacrée aux enfants prévue pour mai 2002;

recueil de toutes ses politiques et directives sous le titre Politique ontarienne en matière de droits de la personne. Rendu public en septembre 2001, ce recueil contient les mises à jour apportées par la Commission à ses politiques traitant des droits des personnes handicapées, des tests de dépistage de l'alcool et autres drogues, de l'orientation sexuelle, de la grossesse et de l'identité sexuelle.

Enfin, la Commission a poursuivi sa collaboration avec la Fondation canadienne des relations raciales (FCRR) et plusieurs autres partenaires, cette fois-ci afin de produire une vidéo de formation et un guide d'étude traitant du racisme qui travail, au sein d'organismes du secteur public ou privé comme dans la collectivité en général. Cette initiative fait suite à une campagne menée il y a quelque temps par la FCRR sur le thème: On ne voit bien qu'avec le cœur - Unis contre le racisme, à l'occasion de laquelle la Fondation avait diffusé sur les réseaux de télévision canadiens des courts messages d'utilité publique mettant en scène divers artistes canadiens.

### Conseils en matière de droits de la personne

Le mandat de la Commission inclut d'examiner et de revoir les lois, les règlements, les programmes et les politiques, et de faire des recommandations relatives à leur prise en compre des droits de la personne, de même qu'à encourager les particuliers au même titre que les organismes publics ou privés à prendre des mesures visant à promouvoir les objets du Code. En conséquence, la Commission fournit des conseils au gouvernement provincial comme au secteur privé sur tout ce qui touche les droits de la personne.

## A titre d'exemples:

- en avril 2001, la Commission a fait des observations détaillées au ministère du Travail dans le cadre des consultations lancées par celui-ci à propos de la réforme des organismes du travail et l'éventuelle création d'un tribunal unifié du travail;
- le même mois, la Commission a adressé une lettre au ministre des Transports, lui signalant que les exigences en matière d'acuité visuelle prescrites par règlements pris en application du Code de la route ne prévoient aucune possibilité d'évaluation personnalisée de l'acuité visuelle des personnes ayant une déficience visuelle;
- la Commission a adressé une autre lettre au ministre des Services sociaux et communautaires, puis a rencontré celui-ci, pour lui donner son avis sur la question de l'imposition de tests obligatoires aux bénéficiaires de l'aide sociale visant à déterminer s'ils ont une dépendance à l'alcool ou à la drogue et s'ils possèdent des capacités minimales de lecture, d'écriture et de calcul;
- en juin 2001, la Commission a écrit à l'honorable David Turnbull, alors Solliciteur général, au sujet du manuel des normes policières publié par son

jeunes, les parents et les enseignantes ou enseignants comme le public en général à surmonter le choc de cette tragédie, à en discuter et à faire face à ses répercussions.

Conformément à son mandat continu de promouvoir la compréhension des droits de la personne, la Commission a par ailleurs diffusé, en décembre 2001, six nouveaux dépliants bilingues rédigés en langage clair, dont cinq portant sur les droits des Ontariennes et des Ontariens et plus exactement leurs droits en ce qui concerne l'embauche, le harcèlement sexuel, l'orientation sexuelle, le harcèlement racial et la grossesse ou l'allaitement naturel, et un sixième portant sur la Commission.

La Commission a également mis à jour L'enseignement des droits de la personne en Ontario, le document pédagogique qu'elle a conçu pour aider les enseignantes et les enseignants du secondaire à familiariser leurs élèves avec tout ce qui touche les apportée au Code en 1999, suite à laquelle « le partenariat avec une personne de même sexe » fait désormais partie des motifs de discrimination illicites, plusieurs même sexe » fait désormais partie des motifs de discrimination illicites, plusieurs vêtudes de cas additionnelles, de même que des renvois à divers sites Web fiables traitant des droits de la personne.

Enfin, la Commission affiche régulièrement sur son site Web Droits en ligne, un bulletin électronique trimestriel mettant en lumière ses accomplissements récents, de même que des liens vers d'autres sites et ressources ayant un rapport avec les droits de la personne. On y trouve aussi une section intitulée « Questions que vous nous avez posées », apportant des réponses à des questions concernant l'application du Code et des politiques de la Commission dans des situations particulières. Le bulletin est aussi distribué par courriel ou par télécopieut aux intervenants et autres personnes qui en veulent une copie.

### Partenariats et autres activités coopératives

La Commission est membre de plusieurs partenariats qui appuient les efforts qu'elle déploie pour promouvoir une meilleure compréhension des droits de la personne.

Durant l'exercice écoulé, la Commission a continué de resserrer ses liens de

partenariat avec l'association des professionnelles et professionnels en ressources humaines de l'Ontario, l'HRPAO (Human Resources Professionals Association of Ontario). Plusieurs membres du personnel de la Commission ont participé à la conférence annuelle de l'HRPAO et fait des exposés lors de six autres rencontres régionales organisées par cette association.

De concert avec CCH Canadienne Limitée, l'un des éditeuts les plus réputés au pays se spécialisant dans la gestion des ressources humaines, le droit et la comptabilité, la Commission a produit un



### Exposés et autres activités

Voici sept années de suite que la Commission a réussi à maintenit un tythme soutenu en matière d'activités d'éducation du public. En 2001-2002, les 104 rencontres à l'occasion desquelles des membres du personnel de la Commission ont soit fait un exposé, soit présenté et distribué de la documentation sur les droits de la personne, ont attiré quelque 9 000 personnes.

Le commissaire en chef a fait plusieurs discours lors de conférences et de symposiums organisés par l'Association des travailleuses et travailleurs sociaux de l'Ontario, l'Association canadienne des individus retraités (aujourd'hui qualiffée officieusement d'association des personnes de 50 ans et plus), la Commission de la sécurité professionnelle et de l'assurance contre les accidents du travail (à l'intention des employeurs du secteur de l'assurance contre les accidents du travail (à l'intention des employeurs du secteur de l'assurance contre les accidents du travail (à l'intention des employeurs du secteur de l'asnuexe 2) ou encore l'association Adult Protective Service Association of Ontario.

M. Norton a également pris la parole lors de conférences variées, dans plusieurs facultés de droit et devant des élèves d'écoles élémentaires et secondaires un peu partout dans la province, en plus d'avoir donné des entrevues à la radio, à la télévision et dans la presse au sujet de questions d'actualité touchant les droits de la personne,

En octobre 2001, le commissaire en chef a pris la parole devant le Comité sénatorial permanent des droits de la personne, dans le cadre des audiences tenues par celui-ci en vue d'examiner les mécanismes que le gouvernement fédéral devrait adopter pour que le Canada respecte ses obligations nationales et internationales en matière de droits de la personne. Dans sa déclaration, le commissaire en chef a années et souligné en quoi la Commission a, ce faisant, contribué à assurer la conformité du Canada à l'échelle nationale et provinciale avec les conventions internationales dont notre pays est signataire.

### Publications

Le site Web de la Commission, www.obrc.on.ca, est désormais son plus précieux outil pour la diffusion généralisée des documents qu'elle publie. Toutes ses publications importantes, telles que ses politiques, la documentation relative à ses consultations et ses communiqués de presse, de même que le résumé des décisions rendues à l'égard de certaines plaintes et des renseignements sur les procédures de la Commission y sont accessibles en français comme en anglais. Durant l'exercice 2001-2002, 233 090 personnes ont visité ce site Web, soit en moyenne 638 personnes par jour. Suite aux attentats du 11 septembre, la Commission a produit une

compilation de ressources et de liens électroniques sur son site Web afin d'aider les



matière de qualité de service, puis à évaluer les résultats de l'initiative tant sur le plan quantitatif que qualitatif.

La Commission, GREAT et le MCCT sont fermement déterminés à poursuivre leur collaboration au cours du prochain exercice. La Commission se réjouit d'avance de la différence que cette initiative ne manquera pas de faire dans la vie des Ontariennes et des Ontariens autochtones, et en particulier des personnes autochtones vivant à Toronto.

### **TEXHTAMA XIA9**

En janvier 2002, le gouvernement de l'Ontario a décerné à sept membres de la Direction des politiques et de l'éducation de la Commission le « Prix Améthyste pour souligner les réalisations exceptionnelles des employées et employées de la fonction publique de l'Ontario », en l'occurrence pour saluer leurs efforts relatifs à l'élaboration du document Politique et directives sur le handicap et l'obligation d'accommodement.

La remise de cette distinction reconnaît la recherche approfondie, les vastes consultations publiques et l'excellente stratégie d'éducation du public mis en œuvre par le personnel de la Direction pour concevoir et promouvoir cette nouvelle politique, qui sert désormais de référence à routes les personnes cette nouvelle politique, qui sert désormais de référence à routes les personnes de la handicapées du Canada. Il s'agit là de la seconde fois que le personnel de la Commission s'est distingué de la sorte ; en 1998, le même prix lui avait été remis pour souligner la création et la mise en service du système informatique de gestion des dossiers (SIGS) de la Commission, vanté pour ses mérites non seulement au Canada, mais au-delà de nos frontières.



### EDUCATION DU PUBLIC

L'exercice écoulé a été la seconde année de mise en œuvre par la Commission d'une stratégie triennale relative à ses activités d'éducation du public prévues pour la période de 2000 à 2003.

Cette stratégie témoigne de l'engagement de la Commission à forger ou à cultiver des partenariats tant dans le secteur des organismes sans but lucratif que dans les secteurs public et privé. Elle souligne aussi la nécessité d'un plan efficace de renforcement des relations entre la Commission et les personnes ou groupes s'intéressant aux droits de la personne.

à des pratiques discriminatoires dans les domaines de l'emploi et des services, mais leur traitement inégal concernant l'accès à un logement est leur problème le plus pressant.

Ces premières consultations ont aussi permis de constater que les services de la Commission ne sont guère connus au sein des communautés autochtones et que les personnes autochtones ne saisissent en général pas tout à fait la capacité de la Commission d'intervenit pour remédier à la discrimination souvent pratiquée à leur égatd, par exemple dans le domaine du logement hors réserve.

Le rapport publié après achèvement de la première phase de cette initiative incluait une série de recommandations concernant les mesures envisageables par la Commission pour accentuer sa présence au sein des communautés autochtones. Parmi ces recommandations figuraient différentes stratégies susceptibles de sensibiliser les personnes autochtones aux droits de la personne et de faciliter leur accès aux mécanismes de protection de ces droits.

### Phase II:

La phase II de cette initiative s'est déroulée durant l'été 2001.

Lune des conditions préalables à l'exécution de cette initiative était qu'elle fasse appel à la participation d'organisations autochtones. Suite à un processus de sélection rigoureux, la Commission a décidé d'associet le Native Canadian Centre of Toronto (MCCT) à cette initiative. MCCT est un centre d'amitié autochtone établi à Toronto depuis plus de 30 ans. Selon sa description officielle, il s'agit d'un organisme communautaire sans but lucratif offiant aux personnes autochtones un point de rencontre où elles peuvent accéder aux programmes et services pouvant les intéresset, dans une atmosphère visant à refléter la culture autochtone traditionnelle.

En septembre 2001, la Commission a organisé deux journées de formation consécutives à l'intention des membres de son personnel et du personnel du MCCT visant à les familiariser avec tous les aspects de l'initiative et à faire le tour des différents problèmes à surmonter pour assurer des droits égaux aux personnes autochtones. Ces journées de formation ont aussi permis aux personnes travaillant pour la Commission et pour le Centre de faire connaissance et de se faire une meilleure idée de leurs sujets de préoccupation respectifs.

Un agent de liaison pour les droits de la personne a commencé à travailler à temps plein au MCCT en janvier 2002. En l'espace de très peu de temps, des membres de la communauté autochtone ont commencé à prendre conseil auprès de lui à propos de divers types d'incidents.

GREAT continue de participer à cette initiative et se verra confier l'exécution de sa phase III (à partir de 2002-2003), qui consistera à arrêter des normes en

trananil sur les services accessibles de transport en Ontario, diffusé en février 2001. Elle a ainsi recueilli plus d'une trentaine d'observations écrites de fournisseurs de services de transport en commun, d'organismes de défense des intérêts des personnes âgées, handicapées et autres, de syndicats et de particuliers. Ces observations font état de doléances à plusieurs niveaux : l'établissement de normes concernant les services de transport en commun, le financement de ces services, les rôles et responsabilités des entreprises qui les fournissent, de même que les retombées des obstacles à l'utilisation des services de transport en commun sur les personnes handicapées, les familles ayant de jeunes enfants et d'autres personnes dont le droit à un âgées, les familles ayant de jeunes enfants et d'autres personnes dont le droit à un traitement égal en matière de services est protégé par le Code.

L'accessibilité des services de transport en commun est une question de la plus haute importance sur le plan des droits de la personne, étant donné que les obstacles à l'utilisation de ces services auxquels se heurtent les personnes handicapées, les personnes âgées et les familles ayant de jeunes enfants les empêchent de pleinement participer à la vie de la collectivité.

La Commission publiera un rapport de consultation basé sur les observations recueillies à ce sujet au début de l'exercice 2002-2003.

### INITIATIVE À L'INTENTION DES PERSONNES AUTOCHTONES

Eexercice 2001-2002 marque la seconde année de l'initiative lancée par la Commission à l'intention des personnes autochtones de la province, afin de les sensibiliset aux dispositions du Code et de les inciter à recourir à ses services lorsqu'elles en ont perté plainte pour arteinte aux droits de la personne, ce qui peut s'expliquer du fait que le processus provincial de protection des droits de la personne leur était jusqu'ici que le processus provincial de protection des droits de la personne leur était jusqu'ici pour ainsi dire étranget.

La Commission a forgé un partenariat avec deux organisations autochrones, d'une part Grand River Employment and Training (GREAT) situé à Ohsweken (près de Brantford) et, d'autre part, le Native Canadian Centre of Toronto, en vue de la mise au point et de l'exécution de cette initiative.

### Phase I:

La première phase de l'initiative a pris la forme de consultations avec organisations autochtones de la province. Ces consultations ont confirmé que les personnes autochtones sont en très grand nombre victimes de discrimination en matière de logement : elles se heurtent aussi



Les changements apportés à la politique expliquent aussi en détail les droits et les responsabilités concernant l'allairement maternel, en particulier sur les lieux de travail et dans les lieux publics, tout en soulignant que l'allairement au sein est une question à la fois de santé et de droits de la personne, et non une question de décence. Cette politique vise à éduquer les employeurs, les locateurs, les fournisseurs de services et le grand public sur les droits des femmes enceintes et des femmes qui allaitent.

## Application de la politique et des directives révisées sur le handicap et l'obligation d'accommodement (ou d'adaptation)

La Commission a continué à pousser l'application des principes énoncés dans son document Politique et directives sur le handicap et l'obligation d'accommodement, publié en mars 2001. Fidèle à son engagement, elle a consulté les personnes et groupes intéressés à propos de la production de guides en langage clair relatifs à cette politique visant à aider les employeurs, les syndicats et les personnes handicate politique visant à aider les employeurs, les syndicats et les personnes handicate politique visant à sider les employeurs, les syndicats et les personnes handicates politique visant à sider les employeurs, les syndicats et les personnes handicates politique visant à sider les employeurs, les syndicates et les personnes dans la comprend de la production de guides et le la consultation de la constitute de la consultation de la consulta

La Commission a organisé deux groupes de consultation pour discuter de la version provisoire de ces guides. Le premier regroupair des représentantes et représentants de salariés, de cliniques d'aide juridiques, de syndicars, de groupements de personnes handicapées et d'organismes se vouant à la défense des inrérêts de celles-ci. Le second regroupair des employeurs et des organismes représentant les inrérêts du patronat. La Commission tiendra compre des renseignements et des observations recueillis durant ces discussions lors de la production des guides définitifs.

Lors de la diffusion initiale de certe politique, le commissaire en chef, M. Keith Norton, avait fait savoir que la Commission avait l'intention d'étudier l'accessibilité des restaurants en Ontario. Durant l'exercice écoulé, la Commission a adressé une lettre à 29 restaurants, chaînes de cafés et chaînes de restauration rapide renommés en vue de se renseigner aut l'accessibilité de leurs locaux et leurs éventuels projets pour, au besoin, les rendre pleinement accessibles. Cette initiative se poursuit et d'autres mesures s'y rapportant sont prévues pour l'exercice à venir.

Enfin, la Commission a mis au point une stratégie et produit un document de travail portant sur la prise en considération des besoins des personnes handicapées dans le secreur de l'éducation. Au cours du prochain exercice, elle tiendra des consultation et sultations publiques qui aboutitont à la publication d'un rapport de consultation et de lignes directrices spécifiques sur cette question.

### Accessibilité du transport en commun

La Commission a invité les personnes et groupes intéressés à lui communiquer par écrit leur point de vue sur les questions qu'elle a soulevées dans son Document de

Poursuivant les travaux qu'elle avait déjà entreptis dans ce domaine, la Commission a choisi la Journée internationale pour l'élimination de la discrimination raciale, 21 mars 2002, pour annoncer la diffusion d'un document de travail intitulé droits de la personne Jondées sur des motifs multiples. Comme son titre l'indique, ce droits de la personne Jondées sur des motifs multiples. Comme son titre l'indique, ce droits de la personne sous l'angle des recoupements, autrement dit d'une éventuelle intersection, entre plusieurs motifs de discrimination illicites. Il marque le point de intersection, entre plusieurs motifs de discrimination illicites. Il marque le point de départ d'un processus visant la mise au point d'instruments concrets qui permettront à la Commission d'adopter une telle approche intersectionnelle dans toutes ses activités au jour le jour.

### Document de recherche sur les commissions des droits de la personne et les droits économiques et sociaux et Résumé d'un dialogue sur les politiques pertinentes

En 2001-2002, la Commission a fait connaître les résultats de deux initiatives qu'elle avait menées dans le but d'étudiet les moyens d'amélioret sa réaction aux nouveaux enjeux en matière de droits de la personne et de contribuet à la défense en Ontario des droits créés en vertu de conventions internationales dont le Canada est signataire.

La Commission a affiché en février 2002 sur son site Web le résumé des discussions ayant eu lieu lors de la rencontre qu'elle a organisée sur le thème Les orientations politiques futures des commissions des droits de la personne - Un dialogue.

Dans un document de recherche publié l'an dernier sous le titre Les commis-

sions des droits de la personne et les droits économiques et sociaux, la Commission se penche par ailleurs sur la question de savoir comment les commissions des droits de la personne telle qu'elle-même pourraient jouer un plus grand tôle dans la protection et la promotion des droits économiques et sociaux et dans l'application des traités internationaux ratifiés pat le Canada. Ce document de rechetche, prépaté pat le personnel de la Commission, ne constitue pas un énoncé de politique approuvé pat celle-ci. Il est accessible sur le site Web de la Commission.

### Politique sur la discrimination liée à la grossesse et à l'allaitement maternel

Durant l'exercice écoulé, la Commission a révisé et étoffé le document qu'elle avait publié en 1999 à titre de Politique sur la discrimination liée à la grossesse et à l'allaitement maternel de manière à tenir compre des modifications à la Loi sur les normes d'emploi entrées en vigueur en septembre 2001. La politique révisée met au clair l'interaction entre la Loi sur les normes d'emploi et le Code.

l'assurance-vie et invalidité, de l'autre du secteur de l'assurance automobile et de l'assurance sur les biens lors de deux tables rondes organisées à cet effet.

police d'assurance s'ils révèlent une incapacité présente ou un risque d'incapacité tests génétiques et les renseignements connexes ne puissent pas servir à refuser une Commission adopte la position selon laquelle il conviendrait de voir à ce que les de santé mentale. Parmi les recommandations qu'elle formule dans ce rapport, la en ce qui a trait aux affections présumées « moins graves », telles que les problèmes celles-ci ou encore les variations en matière de traitement des demandes de règlement de renseignements médicaux et l'annulation des polices en cas de manquement à souvent très strictes, parfois même harcelantes, en usage concernant la présentation rérends abordables; le manque de transparence des polices d'assurance; les exigences évaluer les risques; les possibilités d'accès à des mécanismes de règlement des difjustification des périodes d'exclusion et du recours à l'information génétique pour des consommateurs pour leur part ont soulevé diverses questions concernant la tion des risques lui permet d'offrir des produits meilleur marché. Les porte-parole surcroît que la marge de manœuvre dont elle dispose à l'égard des critères d'évaluajusqu'à ce jour que le recours à ces critères reste nécessaire, l'industrie estimant de d'assurance automobile. Il ressort toutefois de la recherche effectuée par l'industrie dans d'autres domaines que les assurances) pour l'évaluation des risques en matière sexe et l'état matrimonial (autant de motifs de discrimination interdits par le Code des assurances devrait faire son possible pour renoncer aux critères tels que l'âge, le Dans ce rapport, la Commission se fait l'apôtre du principe que l'industrie

La Commission encourage l'industrie des assurances, les groupements de protection des consommateuts et les responsables gouvernementaux à poursuivre leut dialogue sur les droits de la personne dans le domaine des assurances.

### Approche intersectionnelle de la discrimination

Si nous voulons, en tant que société, vraiment venir à bout des incidents de discrimination auxquels se heurtent certaines personnes, nous devons toujours garder à l'esprit que les facteurs tels que la race, le sexe, l'âge, le lieu d'origine ou le handicap se recoupent souvent et que les personnes concernées se trouvent dans pareil cas placées dans des situations particulières. Plusieurs initiatives de recherche et d'élabotation de politiques entreprises par la Commission de récente date ont confirmé qu'il existe à bien des égards des liens intrinsèques entre divers motifs de discrimination et que les actes discriminatoires eux-mêmes sont fréquemment le résultat de notre conception de l'identité personnelle basée sut des facteurs sociaux, historiques, politiques et culturels.

tion fondée sur l'âge. Le rapport souligne l'effet dévastateur de l'âgisme sur l'égalité des droits et des chances pour les personnes d'un certain âge. « L'âgisme » se traduit par deux phénomènes, d'une part, la perpétuation de mythes et de stéréotypes concernant les personnes âgées qui n'ont aucun fondement dans la réalité du vieillissement, mais qui reflètent l'attitude dominante vis-à-vis de nos aînés et, d'autre part, la tendance à organiser la société comme si la jeunesse était le seul âge de la vie. L'âgisme va évidemment à l'encontre de la satisfaction des véritables besoins des personnes âgées.

Il est temps d'agir met en relief les quatre principaux domaines dans lesquels les personnes d'un certain âge se heurtent le plus souvent à l'âgisme et donc à la discrimination fondée sur l'âge, à savoir l'emploi, les soins de santé, le logement et les transports en commun. Le rapport énonce les engagements de la Commission pour ce qui est de lutter contre l'âgisme, de même que ses recommandations quant aux mesures à prendre dans ce sens tant à l'échelle des collectivités que du gouvernement provincial. L'une de ces recommandations est que du



l'Assemblée législative de l'Ontario modifie le Code de sorte à supprimer son autorisation implicite de la retraite obligatoire à 65 ans et qu'elle adopte des mesures de protection contre la discrimination fondée sur l'âge dans le domaine du travail pour les personnes de 65 ans et plus. Cette recommandation a susciré beaucoup d'intérêt et de réactions dans les médias comme auprès du public.

Conformément à ses engagements, la Commission a adopté, le 26 mars 2002, une politique sur la discrimination fondée sur l'âge envers les personnes âgées. Elle compre diffuser cette politique au cours du prochain exercice et lancer par la même occasion une campagne de sensibilisation du public sur l'âgisme et routes les formes que prend la discrimination fondée sur l'âge.

### Assurances

En octobre 2001, la Commission a rendu public son rapport de consultation Les assurances et les droits de la personne. Le but de cette consultation avait été d'accroître la sensibilité du public et de l'industrie aux questions touchant les droits de la personne dans le domaine de l'assurance, de même que d'étudier les solutions de rechange possibles aux pratiques actuelles.

Ce rapport tient compte de dix-neuf mémoires présentés à la Commission en réponse au document de travail qu'elle avait diffusé sur le même thème en 1999, mémoires dont les auteurs représentent les compagnies d'assutance, le gouvernement et des groupements de protection des consommateurs. Il reflète aussi les discussions de la Commission avec des représentantes et représentants, d'une part, du secteur de de la Commission avec des représentantes et représentants, d'une part, du secteur de

### A PROPOS DE LA COMMISSION

La Commission ontarienne des droits de la personne (la « Commission ») est un organisme indépendant du gouvernement qui rend compte de ses activités à l'Assemblée législative, par l'intermédiaire du ministre des Affaires civiques. Ses principales fonctions, énoncées dans le Code des droits de la personne (le « Code »), comprennent l'enquête sur les plaintes pour atteinte aux droits de la personne et le règlement de ces plaintes. Selon le Code, la Commission doit en outre promouvoir les droits de la personne et sensibiliser le public à ces droits.

# DIRECTION DES POLITIQUES ET DE L'ÉDUCATION ET PROMOTION DE CES DROITS ET PROMOTION DE CES DROITS

### ÉLABORATION DE POLITIQUES

Fidèle à son mandat, qui est de promouvoir une meilleure compréhension des droits de la personne et de favoriser la recherche visant à éliminer les pratiques discriminatoires, la Commission a entrepris en 2001-2002 un certain nombre d'initiatives axées sur l'élaboration de politiques.

Les politiques et les lignes directrices de la Commission sont des textes publics approuvés par les commissaires qui énoncent la manière dont la Commission interprète différentes dispositions du Code. Ces textes aident la Commission à mieux faire comprendre le Code et à aidet le public, et en particulier les personnes qui interviennent dans la défense des droits de la personne, à se faire une idée de la façon dont la Commission est susceptible d'interpréter et d'appliquer le Code dans une situation donnée. Les faits saillants du dernier exercice sont présentés ci-après.

### Discrimination fondée sur l'âge

La Commission a poursuivi les travaux entrepris durant l'exercice précédent dans le domaine de la discrimination fondée sur l'âge. En juin 2001, elle a publié un rapport de consultation intitulé Il est temps d'agir : Faire respecter les droits des personnes àgées en Ontavio. Ce rapport est l'aboutissement d'une recherche très poussée et de consultations que la Commission a organisées avec plus d'une centaine de particuliers et d'organismes un peu partout dans la province.

Il est temps d'agir met en lumière la proportion importante et grandissante de la proportion importante et grandissante de la discrimina-

faire face. Compte tenu des circonstances, nous sommes particulièrement heureux d'avoit reçu un million de dollars de financement additionnel du gouvernement de l'Ontario pour l'exercice 2002-2003.

Pour terminet, je tiens à remercier les membres du personnel de la Commission pour leur zèle durant cet exercice difficile et pour leur dévouement au service des Ontariennes et des Ontariens.

Le commissaire en chef,

Keith C. Norton c.r., B.A., LL.B

J'ai le plaisir de rendre compre des activités de la Commission ontarienne des droits de la personne dutant l'exercice écoulé, soit du let avril 2001 au 31 mars 2002.

Cette année marque le 40° anniversaire de l'adoption du Code des droits de la personne de l'Ontario. En l'espace de quatre décennies, la population ontarienne est dévenue l'une des plus cosmopolites au monde et notre province est désormais reconnue de par le monde comme un havre de tolétance.



Les événements du 11 septembre et leurs graves répercussions pour les membres de certaines communautés ont hélas ravivé la nécessité d'une vigilance de tous les instants. Nous devons continuer à consolider les progrès qu'il nous a été donné de faire au fil des années pour ce qui est de créer un climat de compréhension et de respect mutuels entre toutes les communautés.

Au cours des semaines qui suivirent, j'ai participé à plusieurs rassemblements interconfessionnels à Toronto. Ces rassemblements ont renforcé davantage encore ma profonde conviction que nous ne devons en aucun cas accepter que des trasgédies telles que ces attentats terroristes ne teintent nos rapports avec qui que ce soit parmi nos amis, nos voisins, nos camarades de classe ou nos collègues de travail à religieuse. Si nous voulons faire avancer la cause des droits de la personne, nous teligieuse. Si nous voulons faire avancer la cause des droits de la personne, nous pour obtenir le respect universel des droits de la personne.

Suite à cette tragédie, j'ai trouvé du réconfort dans la pensée que ce qui fait principalement l'attrait de l'Ontario sont sa formidable diversité culturelle, ethnique et religieuse et sa fervente défense des droits de la personne. À cet égatd, nous avons, comme par le passé, accueilli diverses délégations venues du monde entiet s'inspirer de la structure et des activités de la Commission pour la mise en place ou l'amélioration d'organismes similaires dans leurs propres pays. Le respect des droits de la personne est l'une des assises culturelles de notre société et nous ne pouvons que nous réjouir de voir que l'action de la Commission a aujourd'hui un tayonnement international.

L'exercice écoulé a vu une montée en flèche des plaintes déposées auprès de la Commission, en particulier des plaintes pour discrimination fondée sur l'existence d'un handicap. Ce phénomène peut sans doute s'expliquer de différentes façons, notamment par la plus grande sensibilisation du public aux droits de la personne, mais ce qui importe surtout, c'est que la Commission mette tout en œuvre pout y



Ontario Human Rights Commission

Commission ontarienne des droits de la personne

Chief Commissioner

Tel: 416.314.4541

Commissaire en chef

180 Dundas Street West Toronto OM NA 2R9 180 rue Dundas ouest Toronto ON MAA 2R9 Tél : 416.314.4541

2002 niul

L'honorable Carl DeFaria Ministre des Affaires civiques et ministre délégué aux Affaires des personnes âgées 6º étage, 400, avenue University Toronto (Ontario) MAA 2R9

Monsieur le Ministre,

Conformément au paragraphe 31(1) du Code des droits de la personne de l'Ontario, j'ai le plaisir de vous remettre le rapport annuel de la Commission ontarienne des droits de la personne pour l'exercice 2001-2002, en vue de son dépôt à l'Assemblée législative de l'Ontario.

Ce rapport présente les activités de la Commission pour l'exercice clos le 31 mars 2002.

Veuillez agréer, Monsieur le Ministre, l'expression de mes meilleurs sentiments.

Le commissaire en chef,

Land

Keith C. Norton, c.r., B.A., LL.B.



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